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Property Tax
Rule 462.040 *Change in Ownership—Joint Tenancies*

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RECEIVED

JUL 25 2013

State of California
Office of Administrative Law

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

In re:
Board of Equalization

NOTICE OF APPROVAL OF REGULATORY
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations


OAL File No. 2013-0617-03 S

Adopt sections:
Amend sections: 462.040
Repeal sections:

The California State Board of Equalization in this rulemaking amends title 18, section 462.040 of the California Code of Regulations. This amendment makes the regulation consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy. The amendment clarifies that all transferor(s) must be among the joint tenants for the transfer to be excluded from change in ownership. The amendments also clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants. This amendment also updates the regulation to include transfers between registered domestic partners.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2013.

Date: 7/24/2013


Peggy J. Gibson
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 7/29/2013
RE: Return of Approved Rulemaking Materials
OAL File No. 2013-0617-03S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0617-03S regarding Change in Ownership - Joint Tenancies).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

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Please note this new requirement: Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at **postedregslink@oal.ca.gov**.

DO NOT DISCARD OR DESTROY THIS FILE

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Enclosures

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE
NUMBERS

NOTICE FILE NUMBER

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

Z-2013-0415-01

2013-0617-035

For use by Office of Administrative Law (OAL) only

2013 JUN 17 P 2:08
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2013, 172	PUBLICATION DATE 04/26/2013

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Change in Ownership—Joint Tenancies		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT AMEND 462.040 REPEAL	
TITLE(S) 18			
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE June 17, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 24 2013

Office of Administrative Law

**Text of Proposed Amendments to
California Code of Regulations, Title 18,
Section 462.040, *Change in Ownership - Joint Tenancies***

462.040. Change in Ownership - Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The ~~subsequent~~ transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, ~~the transferors is one of all transferor(s) are among~~ the joint tenants. Such a transferor(s) who is also a transferee(s) and is, therefore, considered to be an “original transferors” for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an “original transferor” acquires an interest in the joint tenancy property either during the period that the “original transferor” holds an interest or by means of a transfer from the “original transferor,” such spouse shall also be considered to be an “original transferor.” “Spouse” includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, anyAny joint tenant may also become an “original transferor” by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be “other than original transferors.” To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both “original transferors.”

Example ~~54(a)~~: A and B purchase property as joint tenants. On December 12, 2004, Later A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their

interests into trust on any date after October 1, 2013, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

Example 65: A and B purchase property as joint tenants. A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 76: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 87-1: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A, B, and C are joint tenants and A is an "original transferor." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor" because he did not acquire his interest from A during the period that A held an interest in the initial joint tenancy.

Example 97-2: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants, and C is A's spouse. C is an "original transferor" because he is the registered domestic partner was the spouse of an "original transferor and he acquired an interest by means of a transfer from A." B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 107-3: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B, as joint tenants, transfer to A, B, and C as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 118: A and B acquire real property as joint tenants. A and B, as joint tenants, transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the transferred interests because A is not one of the transferees.

Example 129: A and B purchase property as joint tenants and transfer their joint

~~tenancy interests to each other through their respective trusts. A and B become~~
~~“original transferors.” On August 13, 2003, A and B sell a 50% percent interest to C~~
~~and D, with the deed showing A, B, C and D as joint tenants. A and B become~~
~~“original transferors.” C and D become “other than original transferors.” On~~
~~December 13, 2003, C and D then transfer their joint tenancy interests to their~~
~~respective trusts for the benefit of the remaining joint tenants, each other through their~~
~~trusts, so that both C and D become “original transferors.” On January 13, 2004, A~~
~~and B then sell their remaining 50% percent to C and D, and go off title. Under~~
~~circumstances where application of the step-transaction doctrine to disregard the form~~
~~of the transaction would be appropriate due to their intent to avoid a change in~~
~~ownership, A, B, C and D do not become “original transferors” as the result of their~~
~~transfers to each other.~~

(2) The transfer terminates an “original transferor’s” interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining “original transferors”; except that, upon the termination of the interest of the last surviving “original transferor,” there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 1340: A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant.

Example 1411: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because both A’s and B’s interests had previously been excluded from reappraisal and B was the last surviving “original transferor.”

(3) The transfer terminates a joint tenancy interest held by “other than an original transferor” in a joint tenancy described in (b)(1) and the interest is transferred either to an “original transferor,” or to all the remaining joint tenants, provided that one of the remaining joint tenants is an “original transferor.” The “original transferor” status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 1512: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.”

Example 1613: ~~A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become “original transferors”.~~ A dies and A’s A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.” D dies and D’s joint tenancy interest passes to B by operation of law, without a Since B is an “original transferor,” there is no change in ownership, ~~because B is an “original transferor.”~~ Upon D’s A’s death, the joint tenancy is terminated and B ceases to be an “original transferor.”

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) ~~A~~ a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) ~~A~~ a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) ~~A~~ a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the “original co-owners” for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the “accumulated interests transferred” shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law section 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(c) Rebuttable Presumption. For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 1744: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an "original transferor."~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

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Government Code Section 11349.3

Title 18, California Code of Regulations

OAL File No. 2013-0617-03 S

Adopt sections:


Amend sections: 462.040

Repeal sections:

The California State Board of Equalization in this rulemaking amends title 18, section 462.040 of the California Code of Regulations. This amendment makes the regulation consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy. The amendment clarifies that all transferor(s) must be among the joint tenants for the transfer to be excluded from change in ownership. The amendments also clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants. This amendment also updates the regulation to include transfers between registered domestic partners.

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Date: 7/24/2013


Peggy J. Gibson
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW

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Sacramento, CA 95814
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DEBRA M. CORNEZ
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TO: Richard Bennion
FROM: OAL Front Desk
DATE: 7/29/2013
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(See instructions on reverse)

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STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <i>per agency request</i> Z-2013-0415-01	REGULATORY ACTION NUMBER 2013-0617-03S	EMERGENCY NUMBER
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2013 JUN 17 P 2:08
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

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AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 18		AMEND 462.040	
		REPEAL	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE June 17, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 24 2013

Office of Administrative Law

**Text of Proposed Amendments to
California Code of Regulations, Title 18,
Section 462.040, *Change in Ownership - Joint Tenancies***

462.040. Change in Ownership - Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The ~~subsequent~~ transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust, and after such creation or transfer, the transferors is one of all transferor(s) are~~ among the joint tenants. Such a transferor(s) who is also a transferee(s) and is, therefore, considered to be an “original transferors” for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an “original transferor” acquires an interest in the joint tenancy property either during the period that the “original transferor” holds an interest or by means of a transfer from the “original transferor,” such spouse shall also be considered to be an “original transferor.” “Spouse” includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, any joint tenant may also become an “original transferor” by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be “other than original transferors.” To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both “original transferors.”

Example ~~54(a)~~: A and B purchase property as joint tenants. On December 12, 2004, ~~Later~~ A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their

interests into trust on any date after October 1, 2013, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

Example 65: A and B purchase property as joint tenants. A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors".

Example 76: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 87-1: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A, B, and C are joint tenants and A is an "original transferor". A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor" because he did not acquire his interest from A during the period that A held an interest in the initial joint tenancy.

Example 97-2: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C; as joint tenants, and C is A's spouse. C is an "original transferor" because he is the registered domestic partner ~~was the spouse of an "original transferor and he acquired an interest by means of a transfer from A."~~ B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 107-3: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." A and B are joint tenants and A is an "original transferor". C is A's spouse. A and B, as joint tenants, transfer to A, B, and C as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 118: A and B acquire real property as joint tenants. A and B, as joint tenants, transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the transferred interests because A is not one of the transferees.

Example 129: A and B purchase property as joint tenants and transfer their joint

tenancy interests to each other through their respective trusts. A and B become “original transferors.” On August 13, 2003, A and B sell a 50% percent interest to C and D, with the deed showing A, B, C and D as joint tenants. A and B become “original transferors.” C and D become “other than original transferors.” On December 13, 2003, C and D then transfer their joint tenancy interests to their respective trusts for the benefit of the remaining joint tenants, each other through their trusts, so that both C and D become “original transferors.” On January 13, 2004, A and B then sell their remaining 50% percent to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become “original transferors” as the result of their transfers to each other.

(2) The transfer terminates an “original transferor’s” interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining “original transferors”; except that, upon the termination of the interest of the last surviving “original transferor,” there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 1340: A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant.

Example 1411: Following the example set forth in Example 10 (above), A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because both A’s and B’s interests had previously been excluded from reappraisal and B was the last surviving “original transferor.”

(3) The transfer terminates a joint tenancy interest held by “other than an original transferor” in a joint tenancy described in (b)(1) and the interest is transferred either to an “original transferor,” or to all the remaining joint tenants, provided that one of the remaining joint tenants is an “original transferor.” The “original transferor” status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 1512: Following the example set forth in Example 10 (above), A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.”

Example 1613: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become “original transferors”. A dies and A’s A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.” D dies and D’s joint tenancy interest passes to B by operation of law, without a Since B is an “original transferor,” there is no change in ownership, because B is an “original transferor.” Upon D’s A’s death, the joint tenancy is terminated and B ceases to be an “original transferor.”

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) Aa transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) Aa transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) Aa transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. {Such transferees shall be considered to be the “original co-owners” for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.}

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the “accumulated interests transferred” shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law section 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(c) Rebuttable Presumption. For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 1744: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract ~~and trust instruments~~ establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an "original transferor."~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

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Comments received during the public comment period will be posted on the OEHHA web site after the close of the comment period.

If you have any questions, please contact Ms. Oshita at cynthia.oshita@oehha.ca.gov or at (916) 445-6900.

References

APP, a division of Fresenius Kabi U.S.A. LLC (APP, 2008). Label for the drug *Chloramphenicol sodium succinate*. Available on the APP web site at:

http://editor.apppharma.com/Pls/Chloramphenicol_for_Inj_45841E_Jan_08.pdf

[Accessed on July 9, 2013].

National Library of Medicine DailyMed web site (NLM, 2012). NLM, National Institutes of Health, Health and Human Services, Bethesda Maryland. Label for the drug *Chloramphenicol sodium succinate*. Available at:

<http://dailymed.nlm.nih.gov/dailymed/lookup.cfm?setid=aed29594-211d-49ef-813f-131975a8d0e3>

[Accessed on July 9, 2013].

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2013-0617-03

BOARD OF EQUALIZATION

Change in Ownership — Joint Tenancies

The California State Board of Equalization in this rulemaking amends title 18, section 462.040 of the California Code of Regulations. This amendment

makes the regulation consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy. The amendment clarifies that all transferor(s) must be among the joint tenants for the transfer to be excluded from change in ownership. The amendments also clarify that the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants. This amendment also updates the regulation to include transfers between registered domestic partners.

Title 18

California Code of Regulations

AMEND: 462.040

Filed 07/24/2013

Effective 10/01/2013

Agency Contact:

Richard E. Bennion

(916) 445-2130

File# 2013-0611-02

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

Approval of Vocational Nursing and Psychiatric Technician Programs

In this action, the Board of Vocational Nursing and Psychiatric Technicians amends several sections in title 16 of the California Code of Regulations as a change without regulatory effect. These modifications essentially replace the term “accredit” or “accreditation” with “approve” or “approval” to reflect the statutory language used in the Business and Professions Code. The Board further changed the reference citations in section 2582 to accurately cite the Business and Professions Code sections related to the subject regulation.

Title 16

California Code of Regulations

AMEND: 2502, 2516, 2525, 2526, 2526.1, 2527, 2529, 2530, 2535, 2562, 2575, 2580, 2581, 2581.1, 2582, 2584, 2585, 2885.1

Filed 07/23/2013

Agency Contact: Mark Ito

(916) 263-7864

File# 2013-0703-04

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Capital Access Program for Small Businesses

The California Pollution Control Financing Authority (Authority) submitted this Certificate of Compliance amending two provisions of section 8072 pertaining to the Capital Access Program for Small Businesses under title 4, division 11, Article 7 of the California Code of Regulations. Legislation that became effective on January 1, 2013, requires financial institutions to notify the Authority within 15 days after the date on which the loan is made of certain matters, such as inter-

Rulemaking File Index
Title 18. Public Revenue
Property Tax
Rule 462.040 *Change in Ownership—Joint Tenancies*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Petition from California Assessors' Association dated February 22, 2012](#)
4. [Reporter's Transcript Chief Counsel Item J1, March 21, 2012](#)
5. [Property Tax Committee Minutes, March 12, 2013](#)
 - Minutes
 - PTC Agenda
 - Formal Issue Paper Number 13-004
 - Attachment A Rule 462.040 Text
 - Attachment B Proposed Language
 - Chief Counsel Memo Dated March 7, 2012
6. [Reporter's Transcript Property Taxes Committee, March 12, 2013](#)
7. [Estimate of Cost or Savings, March 18, 2013](#)
8. [Economic and Fiscal Impact Statements, April 12, 2013](#)
9. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date April 26, 2013
 - Proposed Text of Rule 462.040
 - Email sent to Interested Parties, April 26, 2013
 - CA Regulatory Notice Register 2013, Volume No. 17-Z
10. [Notice to Interested Parties, April 26, 2013](#)

The following items are exhibited:

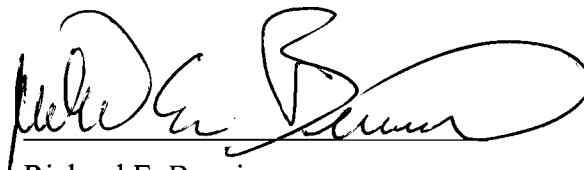
 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Rule 462.040
 - Regulation History
11. [Statement of Compliance](#)
12. [Public Comment, Dale Hough, Chief Appraiser, Los Angeles County Assessor, June 10, 2013](#)
13. [Reporter's Transcript, Item F3, June 11, 2013](#)
14. [Draft Minutes, June 11, 2013, and Exhibits](#)
 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Rule 462.040
 - Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on June 17, 2013 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

June 17, 2013

A handwritten signature in black ink, appearing to read 'Richard E. Bennion', written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 462.040, *Change in Ownership - Joint Tenancies***

Update of Information in the Initial Statement of Reasons

The factual basis, specific purpose, and necessity for, the problems to be addressed by, and the anticipated benefits from the proposed amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*, are the same as provided in the initial statement of reasons. However, the original proposed text of the amendments to Property Tax Rule 462.040 inadvertently omitted the underline that should have illustrated the addition of the closing quotation mark around the reference to “original transferor” in the fifth sentence of subdivision (b)(1) and inadvertently showed the strikeout of the word “of” in the fifth sentence in renumbered example 9. Therefore, the State Board of Equalization (Board) made nonsubstantial and solely grammatical changes to the final text of the adopted amendments to Property Tax Rule 462.040, pursuant to Government Code section 11346.8, subdivision (c), in order to underline the closing quotation mark and delete the strikeouts from the word “of.” The Board did not make any other changes to the text of the proposed amendments to Property Tax Rule 462.040.

The adoption of the proposed amendments to Property Tax Rule 462.040 was not mandated by federal law or regulations and there is no federal regulation that is identical to Property Tax Rule 462.040.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the amendments to Property Tax Rule 462.040 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board’s initial determination that the proposed regulatory action will not have a significant adverse economic impact on business and the Board’s economic impact analysis, which determined that the Board’s proposed regulatory action:

- Will neither create nor eliminate jobs in the State of California;
- Nor result in the elimination of existing businesses;
- Nor create or expand business in the State of California; and
- Will not affect the health and welfare of California residents, worker safety, or the state’s environment.

The proposed amendments may affect small business.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 does not impose a mandate on local agencies or school districts.

Public Comments

The Board received one written comment, which expressed the Los Angeles County Assessor's Office's agreement with the proposed amendments to Property Tax Rule 462.040. Also, Janet Lewis, Supervising Real Property Appraiser for the Sacramento County Assessor's Office, and Barbara Edginton, Assessment Manager for the San Luis Obispo County Assessor's Office, appeared at the public hearing on June 11, 2013, and expressed their support for the Board's proposed amendments to Property Tax Rule 462.040. No other interested parties commented on the proposed regulatory action.

Determinations Regarding Alternatives

By its motion, the Board determined that no alternative to the proposed amendments to Property Tax Rule 462.040 would be more effective in carrying out the purposes for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Further, the Board did not reject any reasonable alternatives to the proposed amendments to Property Tax Rule 462.040 that would lessen any adverse impact the proposed amendments may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed amendments. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

Furthermore, the Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of Revenue and Taxation Code (RTC) section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

Updated Informative Digest for
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 462.040, *Change in Ownership - Joint Tenancies*

On June 11, 2013, the State Board of Equalization (Board) held a public hearing on and unanimously voted to adopt the proposed amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*, described in the notice of proposed regulatory action. There have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Property Tax Rule 462.040 described in the informative digest included in the notice of proposed regulatory action. However, the original proposed text of the amendments to Property Tax Rule 462.040 inadvertently omitted the underline that should have illustrated the addition of the closing quotation mark around the reference to “original transferor” in the fifth sentence of subdivision (b)(1) and inadvertently showed the strikeout of the word “of” in the fifth sentence in renumbered example 9. Therefore, the Board made nonsubstantial and solely grammatical changes to the final text of the adopted amendments to Property Tax Rule 462.040, pursuant to Government Code section 11346.8, subdivision (c), in order to underline the closing quotation mark and delete the strikeouts from the word “of.” The Board did not make any other changes to the text of the proposed amendments to Property Tax Rule 462.040.

The Board received one written comment, which expressed the Los Angeles County Assessor’s Office’s agreement with the proposed amendments to Property Tax Rule 462.040. Also, Janet Lewis, Supervising Real Property Appraiser for the Sacramento County Assessor’s Office, and Barbara Edginton, Assessment Manager for the San Luis Obispo County Assessor’s Office, appeared at the public hearing on June 11, 2013, and expressed their support for the Board’s proposed amendments to Property Tax Rule 462.040. No other interested parties commented on the proposed regulatory action.

The informative digest included in the notice of proposed regulatory action provides:

“Current Law

“Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor’s valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of “change in ownership” in RTC section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of “change in ownership” in RTC sections 61 through 69.5.

“Under Government Code section 15606, subdivision (c), the Board is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted Property Tax Rule 462.040, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

“In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.
- (c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.
- (d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

“The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

“In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

“Effects, Objectives, and Benefits of the Proposed Amendments

“On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

“The Board considered the CAA’s petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA’s requested amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

“In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors’ additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);

- Provide in subdivision (b)(1) that “spouse” includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are “original transferors” or “other than original transferors”; and
- Make other minor grammatical changes, such as deleting the word “subsequent” from example 3, and replacing the “%” symbol with the word “percent” and consistently using quotation marks around the phrases “original transferor” and “other than original transferor” throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

“At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff’s recommendations and unanimously voted to propose the adoption of staff’s recommended amendments to Property Tax Rule 462.040. The effects and objectives of the amendments are to:

- Address the CAA’s petition by making the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

“The Board anticipates that the proposed amendments will promote fairness throughout California’s 58 counties by clarifying the types of transfers that create “original transferor” status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional

notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

“The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 462.040 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because division 1 of title 18 of the California Code of Regulations contains the only state regulations that implement, interpret, and make specific the change in ownership provisions in article XIII A of the California Constitution and the RTC, including Property Tax Rule 462.040, and the proposed amendments are not inconsistent or incompatible with any of the provisions in division 1. In addition, there are no comparable federal regulations or statutes to Property Tax Rule 462.040.”



CALIFORNIA ASSESSORS' ASSOCIATION

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* Past President

RECEIVED

February 22, 2012

FEB 27 2012

Board Proceedings

Diane Olson, Chief
Board Proceedings Division
State Board of Equalization
P.O. Box 942879, MIC: 80
Sacramento, CA 94279-0080

RE: Request for Revision to Property Tax Rule 462.040 – Joint Tenancy

The California Assessor's Association has been approached with a request that we re-submit a request for revisions to the Joint Tenancy Property Tax Rule.

We reviewed the request submitted back in 2007, and we would like to streamline our suggested changes. We request three changes, and additional clarifying examples for one section.

Our requests, in order of priority, are as follows.

1. Our first and most immediate problem/concern is that of trusts in joint tenancies. We understand the intent behind the rule change in 2003 was to allow registered domestic partners to take advantage of the original transferor exclusion, and that it was attempting to broaden the original intent of a 'family' joint tenancy.

Understanding the joint tenancy exclusions was already confusing for most people. Unfortunately, the addition of trusts to joint tenancy has created additional chaos for both property owners and various administrators, including assessors, title companies, and attorneys. We believe that because of the complexities involved, there is also an increase in inconsistent application and understanding of the rule within assessment offices throughout the state. The real and potential problems that can occur when trusts are considered a joint tenant were both unanticipated and unintended by the Board.

We understand that this change, if agreed to, will be prospective only. We do not intend for anyone to be harmed who has relied on the rule as currently written.

2. Clarifying examples need to be added for section (b)(4)(C). There is currently a court case in Marin County, because an attorney and an appeals board and a Superior Court judge did not understand how this section of the rule was meant to be interpreted.

3. Our third concern is the interpretation that allows a change in vesting to create original transferors. Until 2003, a change in vesting only (e.g. A and B as tenants in common to A and B as joint tenants) would not create original transferors. This is consistent with the original Legislative intent. If parents

were on title and added a child or children as joint tenants, or if two individuals were on title and they added the spouse of one of the individuals, then original transferors would be created. However, a deed that only changed the method of holding title was never intended to result in this exclusion.

4. Finally, we would like to reverse a 1999 amendment to the rule. We do not believe this change follows the requirements of the statute under Revenue and Taxation Code section 65(b).

The amendment was stated as follows: "If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest *or by means of a transfer from the original transferor*, such spouse shall also be considered to be an original transferor." (Emphasis added.) In addition, Example 7-2 was added to the rule.

Revenue and Taxation Code section 65(b) states:

There shall be no change in ownership upon the creation or transfer of a joint tenancy interest *if the transferor or transferors, after such creation or transfer, are among the joint tenants*. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses or original transferors shall also be considered original transferors within the meaning of this section. (Emphasis added.)

The code requires that the transferor be among the joint tenants "after such creation or transfer." We believe the rule broadens what is allowed by code.

To summarize, we would like four changes/additions, and in the following priority of urgency.

- First, remove any mention of trusts within a joint tenancy, other than between November 13, 2003 and the date of the proposed regulatory change.
- Second, add examples to clarify the intent of (b)(4)(C).
- Third, return the requirement for an additional person to be added before an original transferor can be created.
- Fourth, require a grantor who is an original transferor to remain on title as a grantee in order for a spouse to acquire original transferor status.

Attached is the Property Tax Rule with suggested revisions in the standard underline/strikeout format.

Thank you for your assistance in this endeavor. Should you have any questions, please call me at (805) 781-5636.

Sincerely,



Tom J. Bordonaro, Jr.
California Assessor's Association, President
San Luis Obispo County, Assessor

Attachment

1 BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
2 450 N STREET
3 SACRAMENTO, CALIFORNIA
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7 REPORTER'S TRANSCRIPT
8 MARCH 21, 2012
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11 ITEM J RULEMAKING
12 ITEM J1
13 PETITION TO AMEND PROPERTY TAX RULE 462.040
14 CHANGE IN OWNERSHIP - JOINT TENANCIES
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22 Reported by: Juli Price Jackson
23 No. CSR 5214
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P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

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Michelle Steel
Vice-Chairwoman

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Betty T. Yee
Member

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George Runner
Member

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11

Marcy Jo Mandel
Appearing for John
Chiang, State
Controller (per
Government Code
Section 7.9)

12

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Diane G. Olson
Chief, Board
Proceedings Division

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For Staff:

Richard Moon
Tax Counsel IV
Tax and Fee Division
Legal Department

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Christine Bisauta
Acting Assistant
Chief Counsel

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1	SPEAKERS	
2	NAME	PAGE
3	BARBARA EDGINTON	5
4	Assessment Manager San Luis Obispo	
5	RICHARD BENSON	7
6	Assessor-Recorder-County Clerk Marin	
7	JOEL BUTLER	8
8	Assessor Yolo	

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 MARCH 21, 2012

4 ---oOo---

5 MS. OLSON: Our next matter is Chief Counsel
6 Matters, J1, Petition to Amend Property Tax Rule
7 462.040, Change in Ownership - Joint Tenancies.

8 MR. HORTON: Members, as the Department comes,
9 we have a few witnesses that would like to testify. I
10 would ask that they come forward -- Mr. Richard Benson,
11 Marin County Assessor-Recorder-County Clerk; Joel
12 Butler, Yolo County Assessor; welcome, and Barbara
13 Edginton, I believe with San Luis Obispo. Am I correct?

14 MS. EDGINTON: Yes, correct.

15 MR. HORTON: Okay, all right, welcome to our
16 friends from the County Assessors. Good seeing you

17 guys.

18 We'll start with the -- please introduce the
19 matter.

20 MR. MOON: Good afternoon, Chairman Horton,
21 Members of the Board. I'm Richard Moon with the Legal
22 Department, along with Christine Bisauta, the Acting
23 Assistant Chief Counsel.

24 This property tax petition is to amend Property
25 Tax Rule 462.040, which governs the change in ownership
26 of joint tenancies. And it requests to amend the rule
27 to address four specific issues that are related to the
28 creation and application of original transferor status

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1 by which a change in ownership and a reassessment of
2 property can be delayed.

3 This rule was last amended in 2003. And staff
4 recommends that the Board institute an interested
5 parties process to hear testimony and evidence regarding
6 the assessors' and taxpayers' experience with the
7 application and administration of the rule, so that we
8 can determine whether the requested amendment should be
9 approved.

10 Thank you.

11 MR. HORTON: Thank you very much.

12 Members, we will hear the witnesses on the

13 subject matter.

14 ---o0o---

15 BARBARA EDGINTON

16 ASSESSMENT MANAGER

17 SAN LUIS OBISPO COUNTY

18 ---o0o---

19 MS. EDGINTON: Thank you. My name is Barbara
20 Edginton. I'm an Assessment Manager with San Luis
21 Obispo County.

22 And I've been asked to to speak on behalf of
23 the -- of Tom Bordonaro, who is the President of the
24 California Assessors' Association.

25 And we'd like to thank you for hearing us on
26 this issue. And we'd like to respectfully request that
27 you approve our proposed revisions to the Property Tax
28 Rule 462.040 on joint tenancy. We've requested three

5

1 changes to the rule, plus an addition of two clarifying
2 examples. But our biggest concern and our primary
3 objective is to remove any language in the property tax
4 rule regarding trusts. In 2003 the property tax rule
5 was amended to add, among other changes, the ability for
6 trusts to become original transferors under certain
7 circumstances. And at the time it was intended to help
8 registered domestic partners, who had no other
9 exclusions for changes from -- transfers that would

10 exclude them from reassessment of property taxes.

11 Now the registered domestic partners have
12 virtual parity with married couples as far as property
13 tax assessment law. And this, in conjunction with the
14 current AB 1700, a potentially new co-tenancy exclusion,
15 would cover most of the target group that was looked at
16 in 2003. Amending the rule would accomplish the goals
17 of both of our groups as determined by a number of joint
18 meetings back in 2007.

19 Administratively the rule, as it currently
20 stands, is confusing as to the nature of trusts and the
21 estates in joint tenancy and it's virtually impossible
22 to handle effectively, con -- particularly since many
23 attorneys and title companies don't recognize the
24 ability of a trust to be a joint tenant.

25 We hear, "After all, joint tenancy is a right
26 of survivorship and how can the trust die?"

27 Even if one accepts that a trust is a joint
28 tenant, a trust is capable of being amended and the

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1 wording changed in a way that would disqualify it from
2 the exclusion without any notification to assessment
3 staff. And having a trust as a joint tenant also has
4 the potential for causing legal problems for the actual
5 owners of the property who are trying to use this.

6 Because of the complexities and difficulties in
 7 the particular part of the rule, it's an area that's
 8 extremely likely to be handled inconsistently throughout
 9 the state by assessment staff. And we believe that by
 10 approving the amendments, it would give your Board the
 11 opportunity to increase consistency and efficiency in
 12 assessment offices throughout the state with very little
 13 harm to property owners.

14 And we thank you for your consideration.

15 MR. HORTON: Thank you as well.

16 ---o0o---

17 RICHARD BENSON

18 ASSESSOR-RECORDER-COUNTY CLERK

19 MARIN COUNTY

20 ---o0o---

21 MR. BENSON: Good afternoon, Members of the
 22 Board. My name is Richard Benson. I'm the
 23 Assessor-Recorder-County Clerk for the County of Marin.

24 And I just also wanted to express my support
 25 for staff's recommendation to open up an interested
 26 parties meeting. I think the -- one of the big benefits
 27 will be to simplify the confusion of joint tenancy rules
 28 and the application for practitioners, both for

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1 assessors' offices and practitioners outside of
 2 assessors' offices.

3 And I also wanted to say that as a recorder, in
4 addition to being an assessor, one of the issues that we
5 see frequently now in the public's eye is how important
6 it is to have the public record transparency for
7 property owners. And one of the things that can come up
8 when a trust is a so-called joint tenant is changes to
9 the -- inside the trust may affect the joint tenancy,
10 but not be recorded. So, from a recorder's perspective,
11 it also helps create some better public record of the
12 ownership record, in particular regard to changes in
13 ownership for reassessment purposes.

14 So, for all these reasons, I again want to
15 express my support for an -- opening up an interested
16 parties. And thank you for your time and consideration.

17 MR. HORTON: Thank you as well.

18 Next?

19 ---o0o---

20 JOEL BUTLER

21 ASSESSOR

22 YOLO COUNTY

23 ---o0o---

24 MR. BUTLER: Thank you, Mr. Chair and Board
25 Members, Joel Butler, Yolo County Assessor.

26 I just want to add my support to this matter
27 too to add clarity and remove confusion in the way this
28 rule is written and, basically, to simplify the

1 administration.

2 I think it's a benefit to not only the State
3 Board's staff, our staff, but to the taxpayer, that they
4 can actually understand what they're getting into.

5 Thank you.

6 MR. HORTON: Thank you, thank you very much.

7 Discussion, Members?

8 Member Yee.

9 MS. YEE: Thank you very much, Mr. Chairman.

10 I just want to add my support to the staff
11 recommendation to begin an interested parties process in
12 this regard. I know that back in 2003, as we looked at
13 the amendments then to this rule, there was a specific
14 purpose and objective. And now, with years of
15 experience with the rule, it's become somewhat untenable
16 with respect to administering it from the County
17 Assessor's perspective and for the taxpayer it's been
18 very unwieldy, such that we thought it would be a tool
19 that could be easily availed, when, in fact, many
20 taxpayers are having to incur additional costs to
21 consult with estate planning attorneys to figure all of
22 this out.

23 So, I did want to mention, as Ms. Edginton did
24 reference, there is a bill that is pending now, AB 1700,
25 by Assembly Member Butler that does look at trying to
26 preserve this -- a particular benefit for the
27 communities that we were contemplating in the past, even
28 though it was specifically targeted back in 2003 as

1 being a tool for registered domestic partners, we know
2 that there are other co-owner relationships that the
3 rule was intended to also apply to, including older
4 adults, seniors who are unmarried who co-own property.
5 And that particular bill is intended to be sure that the
6 benefit that was intended in 2003 is still going to be
7 there for the various communities.

8 So, I think the bill moving in concert with
9 this particular interested parties process is the
10 appropriate process to follow.

11 Thank you.

12 MR. HORTON: Thank you, Member Yee.

13 Member Runner.

14 MR. RUNNER: Yeah, I'm -- I'm supportive of
15 moving this to an interested parties discussion,
16 however, I think that's kind of precisely what I'm
17 concerned about and that is those who may have made some
18 decisions based upon what that -- what the -- what the
19 original rule had done in regard to trust and then
20 the -- then the -- how that affects them.

21 And, so, certainly that's going to be the
22 discussion that can be had in this -- in this interested
23 parties discussion. You know, maybe -- you know, it'd
24 be interesting to see if, indeed, a bill then cleans
25 that up or not.

26 But regardless of that, it's going to be, I
27 think, a part of this discussion that takes place in
28 regards to this interested party and that is, you know,

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1 moving away from what the kind of an intended target was
2 and who -- who -- who are the groups that actually -- or
3 who are the individuals who actually then ended up using
4 it and what effect it will have on them.

5 MR. HORTON: Member Steel.

6 MS. STEEL: I have a question that there is
7 pending court case right now?

8 MR. MOON: Yes, there is.

9 MS. STEEL: So, how it's going to affect for
10 this rule?

11 MR. MOON: Well, what we've recommended is for
12 that part of the rule that's affected by the litigation,
13 that we delay that.

14 And, actually, Marin County has asked us to
15 file an amicus on their side and that will be coming up
16 before the Board --

17 MS. STEEL: Okay, okay.

18 MR. MOON: -- for -- for recommendation next
19 month.

20 MS. STEEL: Okay.

21 MR. HORTON: Okay. Thank you.

22 Further discussion, Members?
23 Is there a motion?
24 MS. YEE: Move to adopt the staff
25 recommendation.
26 MR. HORTON: Moved by Member Yee to adopt staff
27 recommendation. Second by Member Steel .
28 Without objection, such will be the order.

11

1 Thank you very much for appearing before us --
2 those are to our visitors and friends. Thank you for
3 taking the time to come down to the Board of
4 Equalization and share your thoughts.

5 MR. BUTLER: Thank you.
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REPORTER'S CERTIFICATE

3

4 State of California)

5) ss

6 County of Sacramento)

7

8 I, JULI PRICE JACKSON, Hearing Reporter for the

9 California State Board of Equalization certify that on

10 MARCH 21, 2012 I recorded verbatim, in shorthand, to the

11 best of my ability, the proceedings in the

12 above-entitled hearing; that I transcribed the shorthand

13 writing into typewriting; and that the preceding pages 1

14 through 12 constitute a complete and accurate

15 transcription of the shorthand writing.

16

17 Dated: April 5, 2012

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JULI PRICE JACKSON

22 Hearing Reporter

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BOARD OF EQUALIZATION

PROPERTY TAX COMMITTEE MEETING AGENDA

SENATOR GEORGE RUNNER , COMMITTEE CHAIR

450 N STREET, SACRAMENTO - ROOM 121

March 12, 2013 – 10:00 A.M.

-
1. **Discussion and authorization to initiate the rulemaking process for Property Tax Rule 308.6, *Application for Equalization by Member, Alternate Member, or Hearing Officer.***
 2. **Discussion and authorization to initiate the rulemaking process for Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies.***

Issue Paper Number **13-004**



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and
Administrative Efficiency
Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Other

Property Tax Rule 462.040,
Change in Ownership—Joint Tenancies

I. Issue

Should the State Board of Equalization (Board) authorize publication of amendments to Property Tax Rule¹ 462.040, *Change in Ownership—Joint Tenancies*?

II. Alternative 1 - Staff Recommendation

Staff recommends that the attached amendments to Rule 462.040 be authorized for publication (see Attachment A).

III. Other Alternative(s) Considered

None

¹ All references to Rules are Property Tax Rules which are regulations codified in division 1 of title 18, California Code of Regulations.

IV. Background

Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessor when assessing. In compliance with this duty, the Board adopted Property Tax Rule 462.040, *Change in Ownership—Joint Tenancies*.

In 2006, the California Assessors' Association (CAA) requested that the Board initiate a rulemaking process to amend Rule 462.040. The Board initially commenced an abbreviated interested parties process in response to the CAA's request, but, in December 2006, the Board instructed staff to begin a more in-depth interested parties process to review all of the CAA's concerns regarding the rule. At the request of Board staff, the CAA resubmitted its request to amend Rule 462.040 on February 8, 2007 to commence the interested parties process. However, on May 8, 2007, the CAA requested that the interested parties process be delayed.

On February 22, 2012, the Board received a new petition from the CAA requesting that the Board make amendments to the rule. At the March 21, 2012 Board meeting, staff was directed to discuss the CAA's requested rule amendments with interested parties. The CAA is requesting the following amendments to the rule:

- Provide that a transfer of a joint tenancy interest to a trust meeting certain requirements creates original transferor status only if made between November 13, 2003 and the effective date of the requested regulatory change;
- Reinstate the requirement that an additional person be added as a joint tenant in order to create original transferor status; and
- Require a grantor to also be a grantee in order to accord original transferor status to the grantor's spouse.
- Provide examples to clarify the change in ownership consequence of severances of certain joint tenancies under Rule 462.040, subdivision (b)(4)(C).

The CAA also requested that examples be added to clarify the change in ownership consequence of severances of certain joint tenancies under Rule 462.040, subdivision (b)(4)(C). However, due to current litigation, any changes to this subdivision will be deferred until the court case is finally resolved.

V. Discussion

Rule 462.040 reflects the change in ownership provisions for transactions that create, transfer, or terminate joint tenancy interests under the provisions of Article XIII A of the California Constitution (Proposition 13). The rule was last amended by the Board in July 2003, with an effective date of November 13, 2003.

Following the Board's direction at its March 2012 meeting, staff met with interested parties in Sacramento on August 27, 2012 to discuss the CAA petition to amend Rule 462.040. Subsequent to the comments received during the August 27 meeting and other comments received from interested parties, staff developed a draft of proposed amendments to the rule and distributed it to interested parties for comments/suggest via Letter To Assessors (LTA) 2012/052.

As part of the discussion and agreement at the August 27 meeting, the CAA representatives agreed to rescind the requests in the CAA petition to amend the rule to "reinstate the requirement that an additional person be added as a joint tenant in order to create transferor status," and to "require a grantor to also be a grantee in order to accord original transferor status to the grantor's spouse." Additionally, the CAA agreed to delay the request to "provide examples to clarify the change in ownership consequence of severances of certain joint tenancies under Rule 462.040, subdivision (b)(4)(C)," pending the outcome of current litigation.² Accordingly, these provisions were not included in the draft distributed in LTA 2012/052.

On January 29, 2013, staff held a second interested parties meeting to discuss the comments received on the proposed amendments to Rule 462.040 as distributed via LTA 2012/052 (see Attachment B for a matrix arraying the comments discussed at the January 29 meeting).

There are no outstanding issues following the two interested parties meetings. The attached draft of Rule 462.040 reflects consensus of those who participated in the interested parties process (see Attachment A).

VI. Alternative 1 - Staff Recommendation

Authorize for publication amendments to Property Tax Rule 462.040.

A. Description of Alternative 1

Staff recommends that the attached amendments to Rule 462.040 be authorized for publication (see Attachment A). The amendments will incorporate the provisions requested in the petition of the California Assessors' Association (as revised at the interested parties meeting held on August 27, 2012) and others who participated in the interested parties process.

B. Pros of Alternative 1

The proposed amendments to Rule 462.040 will:

- Provide in subdivision (b)(1) and Examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after the effective date of the requested regulatory change, consistent with current law that provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;³
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with Revenue and Taxation Code section 65, subdivision (b);
- Address county assessors' concerns about certain transfers by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with Revenue and Taxation Code section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Civil Code section 297.5;

² Marin County Superior Court Case No. CIV1003775 First District Court of Appeal No. A134340.

³ Civil Code section 683.2, subdivision (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a].

- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with Revenue and Taxation Code section 62, subdivision (p);
- Provide more detailed information in Examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Incorporate the provisions of Assembly Bill 1700 (Stats. 2012, ch. 781) which added section 62.3 to the Revenue and Taxation Code to provide that "change in ownership" does not include a transfer occurring after January 1, 2013 of real property from one cotenant to the other that takes effect upon the death of one cotenant.

C. Cons of Alternative 1

None

D. Statutory or Regulatory Change for Alternative 1

Action by the Board to adopt amendments to Rule 462.040 will amend section 462.040 of title 18 of the California Code of Regulations.

E. Operational Impact of Alternative 1

None

F. Administrative Impact of Alternative 1

1. Cost Impact

Development of Property Tax Rules is within the scope of the statutory duties of the County-Assessed Properties Division and will be absorbed by existing staff.

2. Revenue Impact

None

G. Taxpayer/Customer Impact of Alternative 1

None

H. Critical Time Frames of Alternative 1

Action by the Board at its March 2013 meeting will allow time for the rulemaking process to proceed with a projected effective date of October 1, 2013 for the amendment to the rule.

VII. Other Alternatives

None

Preparer/Reviewer Information

Prepared by: Property and Special Taxes Department, County-Assessed Properties Division

Current as of: February 11, 2013

Rule 462.040 CHANGE IN OWNERSHIP – JOINT TENANCIES.

Authority Cited: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The ~~subsequent~~ transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust~~, and after such creation or transfer, ~~the transferors is one of all transferor(s)~~ are among the joint tenants. Such a transferor(s) ~~who~~ is also a transferee(s) and is, therefore, considered to be an "original transferor" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an "original transferor" acquires an interest in the joint tenancy property either during the period that the "original transferor" holds an interest or by means of a transfer from the "original transferor," such spouse shall also be considered to be an "original transferor." "Spouse" includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, Any joint tenant may also become an "original transferor" by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be "other than original transferors." To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both "original transferors."

~~Example 4-1~~ 5: A and B purchase property as joint tenants. ~~Later On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors." If A and B had transferred their interests into trust on any date after October 1, 2013, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.~~

~~Example 5~~ 6: A and B purchase property as joint tenants. A and B, ~~as joint tenants~~, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 6 7: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1 8 : A, B, and C are joint tenants and A is an "original transferor." A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor" because he did not acquire his interest from A during the period that A held an interest in the initial joint tenancy.

Example 7-2 9: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants, and C is A's spouse. C is an "original transferor" because he was is the spouse registered domestic partner of an "original transferor." and he acquired an interest by means of a transfer from A. B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 7-3 10: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B, as joint tenants, transfer to A, B, and C as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 8 11: A and B acquire real property as joint tenants. A and B, as joint tenants, transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the transferred interests because A is not one of the transferees.

Example 9 12: A and B purchase property as joint tenants, and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors." On August 13, 2003, A and B sell a 50% percent interest to C and D, with the deed showing A, B, C, and D as joint tenants. A and B become "original transferors." C and D become "other than original transferors." On December 13, 2003, C and D then transfer their joint tenancy interests to each other through their trusts, so that both their respective trusts for the benefit of the remaining joint tenants. C and D become "original transferors." On January 13, 2004, A and B then sell their remaining 50% percent to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C, and D do not become "original transferors" as the result of their transfers to each other.

(2) The transfer terminates an "original transferor's" interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining "original transferor(s)"; except that, upon the termination of the interest of the last surviving "original transferor," there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10 13: A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant.

Example 11 14: Following the example set forth in Example 10 (above), A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. Subsequently, B dies or grants his interest to C and D.

100 percent change in ownership because ~~both A's and B's interests had previously been excluded from reappraisal and~~ B was the last surviving "original transferor."

(3) The transfer terminates a joint tenancy interest held by "other than an original transferor" in a joint tenancy described in (b)(1) and the interest is transferred either to an "original transferor," or to all the remaining joint tenants, provided that one of the remaining joint tenants is an "original transferor." The "original transferor" status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12 15: Following the example set forth in Example 10 (above), A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. C, not an "original transferor," grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an "original transferor."

Example 13 16: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors." A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. C, not an "original transferor," grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an "original transferor." A D dies and AD's joint tenancy interest passes to B by operation of law. Since B is an "original transferor," there is no without a change in ownership, because B is an "original transferor." Upon AD's death, the joint tenancy is terminated and B ceases to be an "original transferor."

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) a A transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) a A transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) a A transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. {Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.}

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law section 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(c) **Rebuttable Presumption.** For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) **Reasonable Cause.** For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 14 17: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an "original transferor."~~

NO.	SECTION REFERENCE		SOURCE	PROPOSED LANGUAGE
	PAGE	LINE		
1	1	29	Placer County Assessor's office (M. Sierra-Sammons)	Revise sentence: To create original transferor status, a transaction must occur that either changes <u>or</u> establishes title <u>vesting</u> to joint tenancy or adds an additional person to title <u>as a joint tenant</u> .
2	1	Ex 5 34	Santa Clara County Assessor's Office (N. Galvez)	Example 5: ...If A and B had transferred their interest into trust one day after the effective date of the amendments adding this sentence, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust. Comment: Want to confirm that the November 13, 2003 date will no longer apply in this case and that this change applies only for those transfers that follow the "effective date of the amendments." Asking this question because we have to change the way we show "original transferor" in our title chain.
3	1	Ex 5 37	San Luis Obispo County Assessor's Office (B. Edginton)	Revise Example 5: If A and B had transferred their interests into trust one day on any date after the effective date of the amendments adding this sentence, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an 40 "original transferor" as a result of the transfer into trust. Comment: To make sure that there is no misunderstanding in case there is a transfer two days after the effective date.
4	2	Ex 7 7-11	San Luis Obispo County Assessor's Office (B. Edginton)	Revise Example 7: A and B acquire property as joint tenants. A and B transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the spouse of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.") Comment: Just to clarify why E becomes an original transferor, and to match the identifier in Example 9.
5	2	Ex 9 18	San Luis Obispo County Assessor's Office (B. Edginton)	Revise Example 9: A transfers to A and B as joint tenants. A is an "original transferor" and B. C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants. C is an "original transferor" because he was the registered domestic partner of an "original transferor." B is an "original transferor" because he is a transferor who is among the transferees. Comment: If B is not also identified as an "original transferor," it implies he did not become an "original transferor."
6	2	Ex 9 20	Galanti & Copenhaver, Inc. (E. Copenhaver)	Revise Example 9: C is an "original transferor" because he was <u>is</u> the registered domestic partner of an "original transferor."

No.	SECTION REFERENCE		SOURCE	PROPOSED LANGUAGE
	PAGE	LINE		
7	2	Ex 10 23	Ambrecht & Associates (Dibby Allan Green)	Revise Example 10: A and B transfers to A and B as joint tenants. A is an "original transferor." A and B, as joint tenants, transfer to B and C as joint tenants. C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A. There is no change in ownership because C, as "original transferor," remains on title.
8	2	Ex 10 23	Contra Costa County Assessor's Office (B. Grose)	Example 10: A and B transfer to A and B as joint tenants. A is an "original transferor." Comment: Can it include whether B becomes an "original transferor" and why or why not? The way the example has been reworked I'm not sure what B's status is.
9	2	Ex 10 23	Santa Clara County Assessor's Office (N. Galvez)	Example 10: A and B transfer to A and B as joint tenants. A is an "original transferor." Comment: Why is A the ONLY "original transferor"? There is no tenancy established before they transferred their interest into joint tenancy, so I am assuming they are tenants in common. If this is the case, A and B should be "original transferors" when they both transfer their interest into joint tenancy (LTA 2004/042). This example may need a bit more clarification as to why B is not an "original transferor."
10	2	Ex 10 23	Galanti & Copenhaver, Inc. (Erika Copenhaver)	Example 10: A and B transfer to A and B as joint tenants. A is an "original transferor." Comment: Should state that both A & B are original transferors. And finally, line 26 should also reflect "is" the registered domestic partner, not "was."
11	2	Ex 10 23	Placer County Assessor's office (M. Sierra-Sammons)	Example 10: A and B transfer to A and B as joint tenants. A is an "original transferor." Comment: What is B's status? B's status as to whether he's an original transferor or not should be clarified.
12	2	Ex 10 23	San Luis Obispo County Assessor's Office (B. Edginton)	Revise Example 10: A and B transfers to A and B as joint tenants. A is an "original transferor, and B is an "other than original transferor." A and B, as joint tenants, transfer to B and C as joint tenants. C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A. Comment: I think including B in the first sentence was just a typing error. However, to stay consistent, the example should identify both those that are "original transferors" and those who are "other than original transferors." In fact, this example should include which B is after the transfer. Would B be an "original transferor" or "other than original transferor"?
13	2	Ex 10 25	Galanti & Copenhaver, Inc. (Erika Copenhaver)	Revise Example 10: C is an "original transferor" because C was is the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

NO.	SECTION REFERENCE		SOURCE	PROPOSED LANGUAGE
	PAGE	LINE		
14	2	Ex 12 31	San Luis Obispo County Assessor's Office (B. Edginton)	<p>Revise Example 12: A and B purchase property as joint tenants. On August 13, 2003, A and B sell a 50 percent interest to C and D, with the deed showing A, B, C, and D as joint tenants. A and B become "original transferors." <u>C and D become "other than original transferors."</u> On December 13, 2003, C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors." On January 13, 2004, A and B then sell their remaining 50 percent to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C, and D do not become "original transferors" as the result of their transfers to each other.</p> <p>Comment: Wouldn't just C and D having interests transfer to <u>each other</u> sever the joint tenancy? Don't they need to include A and B as beneficiaries of their trusts to become "original transferors"?</p>
15	3	Ex 13 3	Ambrecht & Associates (Dibby Allan Green)	<p>Revise Example 13: A and B transfer to A, B, C, and D as joint tenants. <u>A and B are "original transferors" and C and D are "other than original transferors."</u> A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant.</p>
16	3	Ex 13 3	San Luis Obispo County Assessor's Office (B. Edginton)	<p>Revise Example 13: A and B transfer to A, B, C, and D as joint tenants. <u>A and B are "original transferors." C and D are "other than original transferors."</u> A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant.</p> <p>Comment: To maintain consistency in identifying who are "original transferors" and who are "other than original transferors."</p>
17	3	Ex 14 6	San Luis Obispo County Assessor's Office (B. Edginton)	<p>Example 14: A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors." C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal, and B was the last surviving "original transferor."</p> <p>Comment: Isn't it actually C's and D's interests that were previously excluded from reappraisal?</p>

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: March 7, 2012

From: Randy Ferris 
Acting Chief Counsel

Subject: Board Meeting, March 20-21, 2012
Chief Counsel Matters – Item J – Rulemaking
Petition for Amendment of Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*

On February 22, 2012, the Board Proceedings Division received a petition (copy attached) from the California Assessors' Association (CAA) to amend Property Tax Rule¹ 462.040, *Change in Ownership – Joint Tenancies*. This matter is scheduled for the Board's consideration at the March 20-21, 2012 meeting² on the Chief Counsel Matters Agenda. At the meeting, the Board may: (1) deny the petition; (2) grant the petition in part or in whole and commence the official rulemaking process by ordering publication of the notice pursuant to Government Code section 11346.5; (3) direct staff to commence an interested parties process to consider the requested amendments in part or in whole; or (4) take any other action the Board deems appropriate. As explained below, staff recommends that an interested parties process be commenced to consider the requested amendments.

I. Procedural History

The CAA previously filed a petition to amend Rule 462.040 in August 2006. Department staff prepared an issue paper regarding the petition and submitted it to the Board for consideration at the October 11, 2006, Property Tax Committee meeting.³ During that meeting, the Board granted the petition and directed staff to schedule a public hearing regarding the proposed amendments in accordance with Government Code section 11340.7. The notice of action for the proposed amendments was published in the California Notice Register on October 27, 2006 (a copy of the October 27, 2006, Notice Register is available at <http://www.oal.ca.gov/res/docs/pdf/notice/43z-2006.pdf>).

The Board conducted a public hearing regarding the proposed amendments on December 12, 2006, at which time the Board referred the amendments back to the interested parties process. The CAA submitted an additional letter on February 8, 2007, reiterating that it was still

¹ All "Property Tax Rule" or "Rule" references are to title 18 of the California Code of Regulations.

² Under Government Code section 11340.7, the Board has 30 days from receipt to take action on the petition.

³ The amendments requested in the August 2006 petition were narrowed to one issue. That single issue was discussed in the issue paper.

interested in amending Rule 462.040, and that it was advocating five specific changes. Staff issued a February 23, 2007, letter to interested parties informing them about the Board's December 12, 2006, decision to refer the amendments to Rule 462.040 back to the interested parties process, advising the interested parties about the CAA's February 8, 2007, letter, and outlining the new interested parties process. On May 8, 2007, the CAA submitted a letter requesting that the Board delay further action on its petition to amend Rule 462.040. Staff then issued a May 21, 2007, letter informing the interested parties about the delay, and the effective period of the notice of action issued for the proposed amendments to Rule 462.040 subsequently ended one year after the notice was published in accordance with Government Code section 11346.4. There has been no further activity related to the August 2006 petition since the May 21, 2007, letter from staff.⁴

II. Discussion of Change in Ownership of Joint Tenancies and Requested Amendments

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership." This section has been implemented by statutes enacted by the Legislature and Property Tax Rules promulgated by the Board of Equalization. As relevant here such authorities regarding joint tenancy include Revenue and Taxation Code⁵ sections 60, 62 and 65 and Rule 462.040.

Section 60 defines change in ownership. Sections 62 and 65 detail the change in ownership law as applied to the creation, transfer, or termination of joint tenancy interests. Subdivision (b) of section 65 excludes from change in ownership the creation or transfer of a joint tenancy interest if, after such creation or transfer, the "transferor or transferors . . . are among the joint tenants." After such a creation of a joint tenancy interest, the transferors who are also transferees become "original transferors." (Rev. & Tax. Code, § 65, subd. (b).) As such, a subsequent transfer or termination of a joint tenancy interest does not result in a change in ownership if the interest vests entirely or in part in an original transferor. (Rev. & Tax. Code, § 65, subd. (c).) When the last original transferor's interest terminates, there is a change in ownership of the entire property. (*Ibid.*)

Rule 462.040 interprets the change in ownership statutes as they apply to joint tenancies and explains in more detail transfers of interests that create original transferor status. By way of its February 22, 2012, petition, we understand that the CAA requests that the Board approve amendments to Rule 462.040 to:

1. Prospectively disallow the creation of original transferor status by transferring property to trusts;
2. Add examples to clarify the change in ownership consequence of severances of certain joint tenancies under Rule 462.040(b)(4)(C);
3. Require a third party be added as a joint tenant in order to create original transferor status; and
4. Require a grantor to also be a grantee in order to accord original transferor status to the grantor's spouse.

⁴ The documents described in this procedural history are available at: <http://www.boe.ca.gov/proptaxes/rule462040.htm>.

⁵ All section references are to the California Revenue and Taxation Code unless otherwise specified.

Rule 462.040 was the subject of rulemaking in 1999 and 2003. During rulemaking, taxpayer representatives, assessors, Board staff and other stakeholders participated in an extensive interested parties process that discussed a number of issues including issues raised by the first, third, and fourth requested amendments. Board staff believes that all interested parties should again have the opportunity to participate in any potential amendments to Rule 462.040, especially since assessors and other parties have experienced the actual application of the amendments that were made in 1999 and 2003.

With respect to the second requested amendment, there is currently ongoing litigation in Marin County related to Rule 462.040(b)(4). As such, we recommend that a decision on the petition with respect to this issue be delayed until the outcome of that litigation is known. Finally, we note that there is currently in the Legislature a bill that would provide that a transfer of a cotenancy interest in real property from one cotenant to the other that takes effect upon the death of the transferor cotenant and that occurs on or after January 1, 2013, does not constitute a change of ownership when certain conditions are met. (See Assem. Bill No. 1700 (2011-2012 Reg. Sess.) as introduced Feb. 15, 2012.)

III. Staff's Recommendation

Staff recommends that an interested parties process be commenced to consider the requested amendments. In staff's opinion, the requested amendments should be fully considered and an opportunity be given to interested parties to bring forth any relevant information since the Rule was last amended in 2003.

If you need more information or have any questions, please contact Christine Bisauta, Acting Assistant Chief Counsel, at (916) 323-2549 or Richard Moon, Tax Counsel IV, at (949) 440-3486.

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the March 20, 2012 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Approved:

Kristine Cazadd
Kristine Cazadd
Executive Director

Attachment: February 22, 2012, California Assessors' Association Petition

RF:ek

J:/Chief Counsel/Finals/Rule 462.040 Memo.docx

J:/Property/Finals/Monthly CC Agenda Items/2012/Rule 462.040 Memo.doc

cc: Ms. Kristine Cazadd	MIC: 73
Mr. David Gau	MIC: 63
Ms. Christine Bisauta	MIC: 82
Mr. Dean Kinnee	MIC: 64
Mr. Todd Gilman	MIC: 70



CALIFORNIA ASSESSORS' ASSOCIATION

February 22, 2012

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JIM ROONEY
Amador County
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Vice-President

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Diane Olson, Chief
Board Proceedings Division
State Board of Equalization
P.O. Box 942879, MIC: 80
Sacramento, CA 94279-0080

RE: Request for Revision to Property Tax Rule 462.040 – Joint Tenancy

The California Assessor's Association has been approached with a request that we re-submit a request for revisions to the Joint Tenancy Property Tax Rule.

We reviewed the request submitted back in 2007, and we would like to streamline our suggested changes. We request three changes, and additional clarifying examples for one section.

Our requests, in order of priority, are as follows.

1. Our first and most immediate problem/concern is that of trusts in joint tenancies. We understand the intent behind the rule change in 2003 was to allow registered domestic partners to take advantage of the original transferor exclusion, and that it was attempting to broaden the original intent of a 'family' joint tenancy.

Understanding the joint tenancy exclusions was already confusing for most people. Unfortunately, the addition of trusts to joint tenancy has created additional chaos for both property owners and various administrators, including assessors, title companies, and attorneys. We believe that because of the complexities involved, there is also an increase in inconsistent application and understanding of the rule within assessment offices throughout the state. The real and potential problems that can occur when trusts are considered a joint tenant were both unanticipated and unintended by the Board.

We understand that this change, if agreed to, will be prospective only. We do not intend for anyone to be harmed who has relied on the rule as currently written.

2. Clarifying examples need to be added for section (b)(4)(C). There is currently a court case in Marin County, because an attorney and an appeals board and a Superior Court judge did not understand how this section of the rule was meant to be interpreted.

3. Our third concern is the interpretation that allows a change in vesting to create original transferors. Until 2003, a change in vesting only (e.g. A and B as tenants in common to A and B as joint tenants) would not create original transferors. This is consistent with the original Legislative intent. If parents

were on title and added a child or children as joint tenants, or if two individuals were on title and they added the spouse of one of the individuals, then original transferors would be created. However, a deed that only changed the method of holding title was never intended to result in this exclusion.

4. Finally, we would like to reverse a 1999 amendment to the rule. We do not believe this change follows the requirements of the statute under Revenue and Taxation Code section 65(b).

The amendment was stated as follows: "If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest *or by means of a transfer from the original transferor*, such spouse shall also be considered to be an original transferor." (Emphasis added.) In addition, Example 7-2 was added to the rule.

Revenue and Taxation Code section 65(b) states:

There shall be no change in ownership upon the creation or transfer of a joint tenancy interest *if the transferor or transferors, after such creation or transfer, are among the joint tenants*. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses or original transferors shall also be considered original transferors within the meaning of this section. (Emphasis added.)

The code requires that the transferor be among the joint tenants "after such creation or transfer." We believe the rule broadens what is allowed by code.

To summarize, we would like four changes/additions, and in the following priority of urgency.

- First, remove any mention of trusts within a joint tenancy, other than between November 13, 2003 and the date of the proposed regulatory change.
- Second, add examples to clarify the intent of (b)(4)(C).
- Third, return the requirement for an additional person to be added before an original transferor can be created.
- Fourth, require a grantor who is an original transferor to remain on title as a grantee in order for a spouse to acquire original transferor status.

Attached is the Property Tax Rule with suggested revisions in the standard underline/strikeout format.

Thank you for your assistance in this endeavor. Should you have any questions, please call me at (805) 781-5636.

Sincerely,



Tom J. Bordonaro, Jr.
California Assessor's Association, President
San Luis Obispo County, Assessor

Attachment

Rule 462.040 CHANGE IN OWNERSHIP – JOINT TENANCIES.

Authority Cited: Section 15606, Government Code.

Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, 67, Revenue and Taxation Code; Section 662, Evidence Code.

(a) The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) The following transfers do not constitute a change in ownership:

(1) ~~The transfer creates or transfers any joint tenancy interest, including an interest in a trust, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. For the transfer of a joint tenancy interest into trust from November 13, 2003 to [the date before the effective date of the proposed regulatory change], Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be "other than original transferors."~~

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B do not become ~~are both~~ "original transferors." For A and B to become "original transferors," the transfer must be to A and B and at least one other person.

Example 4-1: A and B purchase property as joint tenants. ~~Later On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors." If A and B had transferred their interests into trust before November 13, 2003 or after [one day before the effective date of the proposed regulatory change], neither A's Trust nor B's Trust would be considered a joint tenant and neither A nor B would be considered an "original transferors" as a result of the transfer into trust.~~

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is an "original transferor." A dies. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

~~Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A.~~

Example 7-3~~2~~: A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B as joint tenants transfer to A, B, and C. C is an original transferor.

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not one of the transferees.

Example 9: A and B purchase property as joint tenants, ~~and transfer their joint tenancy interests to each other through their respective trusts. A and B become "original transferors."~~ On August 13, 2003, A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. A and B become "original transferors." On December 13, 2003, C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors." On January 13, 2004, A and B then sell their remaining 50% to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, ~~A, B, C, and D~~ do not become "original transferors" as the result of their transfers to each other.

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferor(s); except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

~~Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors." Following the example set forth in Example 12 above, A D~~
dies and AD's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor." Upon AD's death, the joint tenancy is terminated and B ceases to be an "original transferor."

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer(s) of the ownership interests in the property.)

Example 14-1: A and B purchased property as joint tenants, and transfer to X Corporation, each taking back 50% of the stock. No change in ownership.

Example 14-2: A and B own property as joint tenants, and A is an original transferor. A and B transfer to X Corporation, each taking back 50% of the stock. 100% change in ownership, since this was a joint tenancy described in (b)(1) above.

(5) The transfer is one to which the interspousal exclusion applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from

January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, exclusive of any interest transferred to a spouse or other exempt transfer, only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 14 15: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an "original transferor."~~

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MARCH 12, 2013

PROPERTY TAX COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

For the Committee:

George Runner
Chair

Betty T. Yee
Member

Michelle Steel
Member

Jerome E. Horton
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings Division

For Staff:

Dean Kinnee
Chief, Count-Assessed
Properties Division

Daniel Paul
Tax Counsel
Legal Department

---oOo---

450 N STREET
SACRAMENTO, CALIFORNIA
MARCH 12, 2013

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MR. HORTON: Ms. Richmond, our next matter?

MS. RICHMOND: Our next item on today's
agenda is the Property Tax Committee. Mr. Runner is
the Chair of that committee.

Mr. Runner.

MR. RUNNER: Thank you. Thank you. I call
the Property Tax Committee to order.

We're here to discuss the authorization for
staff to initiate rulemaking process for Property Tax
Rule 462.040, Change of Ownership - Joint Tenancy.

Um, comments from staff?

MR. KINNEE: Uh, morning, Committee Members.
Dean Kinnee with the Property and Special Taxes
Department. With me is Mr. Dan Paul with the Board's
Legal Department.

Uh, in February of 2012, the California
Assessors' Association petitioned the Board to amend
Rule 462.040, Change in Ownership and Joint
Tenancies.

The matter was heard before this Board in
March of 2012. The Board referred it to the
interested parties process. Staff has conducted two
interested parties meetings. And after consideration
of the comments submitted and discussions with the

1 parties, there's no issues in the language before the
2 Board today.

3 Therefore, we ask that the Committee
4 authorize publication of amendments to Property Tax
5 Rule 462.040 as contained in the issue paper
6 13-004.

7 MR. HORTON: So moved.

8 MS. STEEL: Second.

9 MS. MANDEL: Was there a --

10 MR. RUNNER: Excuse me. I think we have
11 some comments from the public in here too.

12 MS. RICHMOND: Yes.

13 MR. RUNNER: So if you have -- think, uh --
14 public comment, I think that we have? I have two
15 listed.

16 MS. MANDEL: Oh.

17 MR. RUNNER: Maybe they've decided not
18 to --

19 MS. MANDEL: Barbara's in the back but
20 she's -- no, right?

21 MR. RUNNER: No?

22 MS. YEE: No. Okay.

23 MR. RUNNER: Okay. Everybody's okay? Okay?
24 No public comment.

25 Any comments, Members? I think there was a
26 motion.

27 MR. HORTON: Well, now that I see our
28 witnesses, I also observe that they may have come

1 from a small distance to share their thoughts.

2 But --

3 MR. RUNNER: Well, we'd love to have them
4 speak if they'd like to, but, you know --

5 MS. YEE: I -- I think they're ready for our
6 action.

7 MR. RUNNER: Okay. There was a motion.

8 MR. HORTON: Don't interrupt success.

9 MR. RUNNER: That's right.

10 I think I heard a motion.

11 MS. YEE: I'll second.

12 MR. RUNNER: And a second. Any objections?

13 Hearing none, uh, we'll go ahead and adopt
14 alternative one in the staff recommendation to
15 initiate -- to initiate the rulemaking process
16 Property Tax 426.040.

17 And that concludes our business.

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for
the California State Board of Equalization certify
that on March 12, 2013 I recorded verbatim, in
shorthand, to the best of my ability, the proceedings
in the above-entitled hearing; that I transcribed the
shorthand writing into typewriting; and that the
preceding pages 1 through 5 constitute a complete and
accurate transcription of the shorthand writing.

Dated: April 17, 2013

Kathleen Skidgel



KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter

**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

Proposed Amendment of Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*

STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

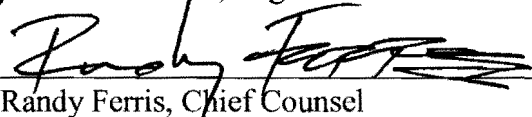
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date March 15, 2013
Richard Bennion, Regulations Coordinator

Approved by  Date 3/18/13
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

ECONOMIC AND FISCAL IMPACT STATEMENT**(REGULATIONS AND ORDERS)**

STD 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 462.040, Change in Ownership - Joint Tenancies		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) Please see the attached .

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

After the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?
Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No
Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: \$ _____ Cost-effectiveness ratio: \$ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

☐ d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Savings of approximately \$ _____ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

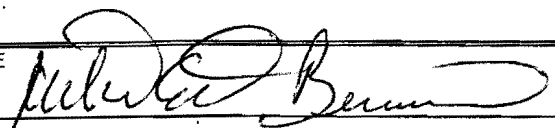
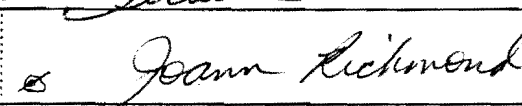
- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 		TITLE Regulations Coordinator
AGENCY SECRETARY ¹		DATE 4-12-13
APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER	DATE
DEPARTMENT OF FINANCE ²	Exempt under SAM section 6660	
APPROVAL/CONCURRENCE		

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2008)) for the Proposed Amendments to
California Code of Regulations, Title 18, Section 462.040,
Change in Ownership - Joint Tenancies

The proposed amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040 make the rule consistent with and clarify current law regarding the affect of transfers that create joint tenancies, transfers of interests in property held in joint tenancy, and transfers that terminate joint tenancies for property tax purposes, and make minor grammatical changes. As such, the Board anticipates that the proposed amendments will provide more clarity regarding current law and the affect of such transfers. However, the Board does not anticipate that the proposed amendments will have a significant effect on the state's economy, including housing costs. In addition, the proposed amendments do not create any new programs, require increased services, or change any costs associated with the administration of property taxes. Therefore, based upon the foregoing information and all of the information in the rulemaking file, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040:

- Will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California; and
- Will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

In addition, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2013-0415-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

APR 15 '13 APR 26 '13

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Change in Ownership - Joint Tenancies		TITLE(S) 18	FIRST SECTION AFFECTED 462.040	2. REQUESTED PUBLICATION DATE April 26 2013
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

7. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt
Amendments to California Code of Regulations, Title 18,
Section 462.040, *Change in Ownership - Joint Tenancies*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*. The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create “original transferor” status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on June 11, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on June 11, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 462.040.

AUTHORITY

Government Code section 15606

REFERENCE

RTC sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67
Evidence Code section 662

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in RTC section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the Board is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted Property Tax Rule 462.040, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.
- (c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests

in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Effects, Objectives, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA’s petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA’s requested amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 462.040. The effects and objectives of the amendments are to:

- Address the CAA's petition by making the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;

- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board anticipates that the proposed amendments will promote fairness throughout California’s 58 counties by clarifying the types of transfers that create “original transferor” status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 462.040 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because division 1 of title 18 of the California Code of Regulations contains the only state regulations that implement, interpret, and make specific the change in ownership provisions in article XIII A of the California Constitution and the RTC, including Property Tax Rule 462.040, and the proposed amendments are not inconsistent or incompatible with any of the provisions in division 1. In addition, there are no comparable federal regulations or statutes to Property Tax Rule 462.040.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other

non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rule 462.040 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on June 11, 2013, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 462.040 during the June 11, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 462.040. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 462.040 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rule 462.040 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments,

with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rule 462.040, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section
462.040, *Change in Ownership - Joint Tenancies***

462.040. Change in Ownership - Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The ~~subsequent~~ transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust,~~ and after such creation or transfer, ~~the transferors is one of all~~ transferor(s) are among the joint tenants. Such a transferor(s) who is also a transferee(s) ~~and is,~~ therefore, considered to be an “original transferors” for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an “original transferor” acquires an interest in the joint tenancy property either during the period that the “original transferor” holds an interest or by means of a transfer from the “original transferor,” such spouse shall also be considered to be an “original transferor.” “Spouse” includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, any Any joint tenant may also become an “original transferor” by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be “other than original transferors.” To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both “original transferors.”

Example ~~5~~4(a): A and B purchase property as joint tenants. On December 12, 2004, ~~Later~~ A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their

interests into trust on any date after October 1, 2013, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

Example 65: A and B purchase property as joint tenants. A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 76: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 87-1: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A, B, and C are joint tenants and A is an "original transferor." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor" because he did not acquire his interest from A during the period that A held an interest in the initial joint tenancy.

Example 97-2: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants, and C is A's spouse. C is an "original transferor" because he is the registered domestic partner was the spouse of an "original transferor and he acquired an interest by means of a transfer from A." B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 107-3: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B, as joint tenants, transfer to A, B, and C as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 118: A and B acquire real property as joint tenants. A and B, as joint tenants, transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the transferred interests because A is not one of the transferees.

Example 129: A and B purchase property as joint tenants and transfer their joint

~~tenancy interests to each other through their respective trusts. A and B become “original transferors.” On August 13, 2003, A and B sell a 50% percent interest to C and D, with the deed showing A, B, C and D as joint tenants. A and B become “original transferors.” C and D become “other than original transferors.” On December 13, 2003, C and D then transfer their joint tenancy interests to their respective trusts for the benefit of the remaining joint tenants.~~~~each other through their trusts, so that both C and D become “original transferors.”~~ On January 13, 2004, A and B then sell their remaining 50% percent to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C and D do not become “original transferors” as the result of their transfers to each other.

(2) The transfer terminates an “original transferor’s” interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining “original transferors”; except that, upon the termination of the interest of the last surviving “original transferor,” there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 1340: A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant.

Example 1411: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because ~~both A’s and B’s interests had previously been excluded from reappraisal and B was the last surviving “original transferor.”~~

(3) The transfer terminates a joint tenancy interest held by “other than an original transferor” in a joint tenancy described in (b)(1) and the interest is transferred either to an “original transferor,” or to all the remaining joint tenants, provided that one of the remaining joint tenants is an “original transferor.” The “original transferor” status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 1512: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.”

~~Example 1613: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become “original transferors”. A dies and A’s~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.” D dies and D’s joint tenancy interest passes to B by operation of law. ~~without a~~ Since B is an “original transferor,” there is no change in ownership, because B is an “original transferor.” Upon D’s A’s death, the joint tenancy is terminated and B ceases to be an “original transferor.”

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) ~~A~~a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) ~~A~~a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) ~~A~~a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the “original co-owners” for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the “accumulated interests transferred” shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law section 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(c) Rebuttable Presumption. For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an “original transferor.” This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and “original transferors” if there is “reasonable cause” to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. “Reasonable cause” means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 1744: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract ~~and trust instruments~~ establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an “original transferor.”~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change
[Legal.Regulations@BOE.CA.GOV]
Sent: Friday, April 26, 2013 11:59 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change to Property Tax Rule 462.040

The State Board of Equalization proposes to amend Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California, at 10:00 a.m., or as soon thereafter as the matter may be heard on June 11, 2013.

The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create "original transferor" status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/rule_462_040.htm

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, April 26, 2013 10:41 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Angeles, Joel; Armenta, Christopher; Baetge, Michelle; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Bridges, Cynthia; Chung, Sophia (Legal); Davis, Toya P.; Delgado, Maria; Duran, David; Elliott, Claudia; Epolite, Anthony (Legal); Ferris, Randy (Legal); Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Giorgi, Alan; Giorgi, Dolores; Goehring, Teresa; Hale, Mike; Hamilton, Tabitha; Hanohano, Rebecca; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Robert (Legal); Levine, David H. (Legal); LoFaso, Alan; Madrigal, Claudia; Maeng, Elizabeth; Mandel, Marcy Jo; Matsumoto, Sid; McGuire, Jeff; Miller, Brad; Mandel, Marcy Jo @ SCO; Moon, Richard (Legal); Morquecho, Raymond; Nienow, Trecia (Legal); Pielsticker, Michele; Ralston, Natasha; Richmond, Joann; Riley, Denise (Legal); Salgado-Ponce, Sylvia; Schultz, Glenna; Shah, Neil; Silva, Monica; Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Suero-Gabler, Cynthia; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vasquez, Rosalyn; Vasquez, Rosalyn; Vassar, Alex; Vigil, Michael; Wallentine, Sean; Whitaker, Lynn; White, Sharon; Williams, Lee; Zivkovich, Robert
Subject: State Board of Equalization - Announcement of Regulatory Change 462.040

The State Board of Equalization proposes to amend Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California, at 10:00 a.m., or as soon thereafter as the matter may be heard on June 11, 2013.

The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create "original transferor" status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

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http://www.boe.ca.gov/regs/rule_462_040.htm

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Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984
Richard.Bennion@boe.ca.gov

sons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

PRELIMINARY ACTIVITIES

PERB staff invited comments on possible regulation changes at PERB Advisory Committee meetings held on January 17, 2013 and February 28, 2013, and circulated discussion drafts of possible regulation changes prior to those meetings. The Board also relied upon the Economic Impact Assessment identified in this Notice in proposing regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, at the address below. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies of these documents and the Final Statement of Reasons, when available, may be obtained by contacting Jonathan Levy or Katharine Nyman at the address or phone number listed below, and are also available on the Board's web site (see address below).

ADOPTION OF PROPOSED REGULATIONS, AVAILABILITY OF CHANGED OR MODIFIED TEXT AND FINAL STATEMENT OF REASONS

Following the hearing, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text — with changes clearly indicated — shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Jonathan Levy or Katharine Nyman at the address indicated below. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INTERNET ACCESS

The Board will maintain copies of this Notice, the Initial Statement of Reasons and the text of the proposed regulations on its web site, found at www.perb.ca.gov, throughout the rulemaking process. Written comments received during the written comment period will also be posted on the web site. The Final Statement of Reasons or, if applicable, notice of a decision not to proceed will be posted on the web site following the Board's action.

CONTACT PERSONS

Any questions or suggestions regarding the proposed action or the substance of the proposed regulations should be directed to:

Jonathan Levy, Regional Attorney
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811
(916) 327-8387
E-mail: jlevy@perb.ca.gov

or

Katharine Nyman, Regional Attorney
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811
(916) 327-8386
E-mail: knyman@perb.ca.gov

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 462.040, *Change in Ownership — Joint Tenancies*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, Change in Ownership — Joint Tenancies. The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers be-

tween cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create "original transferor" status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on June 11, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on June 11, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 462.040.

AUTHORITY

Government Code section 15606.

REFERENCE

RTC sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67

Evidence Code section 662.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975–76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership

has occurred. The California Legislature codified the definition of "change in ownership" in RTC section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the Board is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted Property Tax Rule 462.040, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.
- (c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

- (d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Effects, Objectives, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA’s petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA’s requested amendments. Therefore, Board staff met with interested parties on August 27, 2012,

and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13–004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors’ additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that “spouse” includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are “original transferors” or “other than original transferors”; and
- Make other minor grammatical changes, such as deleting the word “subsequent” from example 3, and replacing the “%” symbol with the word “percent” and consistently using quotation marks around the phrases “original transferor” and “other than original transferor” throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 462.040. The effects and objectives of the amendments are to:

- Address the CAA's petition by making the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 462.040 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because division 1 of title 18 of the California Code of Regulations contains the only state regulations that implement, interpret, and make specific the change in ownership provisions in article XIII A of the California Constitution and the RTC, including Property Tax Rule 462.040, and the proposed amendments are not inconsistent or incompatible with any of the provisions in division 1. In addition, there are no comparable federal regulations or statutes to Property Tax Rule 462.040.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rule 462.040 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will neither create nor eliminate jobs in

the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on June 11, 2013, or as soon thereafter as the Board begins

the public hearing regarding the proposed amendments to Property Tax Rule 462.040 during the June 11, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 462.040. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 462.040 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rule 462.040 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

If the Board adopts the proposed amendments to Property Tax Rule 462.040, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.

TITLE 18. FRANCHISE TAX BOARD

As required by Section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled at 1:00 p.m. on July 25, 2013, at offices of the Franchise Tax Board, 9646 Butterfield Way, Town Center, Golden State Room A/B, Sacramento, California, to amend California Code of Regulations ("CCR"), title 18, section 25106.5-1. The Board proposes to amend this regulation under authority granted in Revenue and Taxation Code ("RTC") sections 19503 and 25106.5, subsection (a). The Board proposes to revise Regulation section 25106.5-1 to bring it into conformity with the most recent version of Treasury Regulation section 1.1502-13. Additional revisions will provide further guidance regarding the proper apportionment treatment of intercompany transactions that are reported utilizing the simplifying rules of Regulation section 25106.5-1, subsection (e). Moreover, subsections (f)(1)(B), (j)(4), and (j)(7) are being revised to reflect additional guidance with respect to the treatment of a Deferred Intercompany Stock Account (DISA) in circumstances involving mergers, subsequent capital contributions, intercompany transfers of stock, tiered excess distributions, and DISA reporting requirements. Finally, subsection (j)(3) is being revised to reflect a nonsubstantive statutory renumbering referenced therein.

The proposed amendments to Regulation section 25106.5-1 would be retroactive in application. Under RTC section 19503, subdivision (a), at its discretion, the Franchise Tax Board may prescribe that a regulation applies retroactively, if the underlying regulation relates to a statute that was enacted prior to January 1, 1998. Revenue and Taxation Code section 25016.5, the statute underlying the revisions to the intercompany transaction regulations, was originally enacted prior to 1998. Accordingly, the Franchise Tax Board may prescribe that the revisions to the intercompany transaction regulations be applied retroactively.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., July 25, 2013. All relevant matters presented will be considered before the proposed regulatory action is tak-

en. Comments should be submitted to the agency officers named below:

AUTHORITY & REFERENCE

Revenue and Taxation Code section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with section 17001), Part 10.2 (commencing with section 18401), Part 10.7 (commencing with section 21001) and Part 11 (commencing with section 23001). Revenue and Taxation Code section 25106.5-1 requires amendments to interpret, implement and clarify RTC section 25106.5.

**INFORMATIVE DIGEST/PLAIN ENGLISH
OVERVIEW**

Taxpayers that have business activities within and without California are required to determine the amount of income properly attributed to activities in California. During 1999, the Franchise Tax Board promulgated Regulation section 25106.5-1, which addresses the treatment of intercompany transactions in a combined report context that occurred on or after January 1, 2001. Regulation section 25106.5-1 generally follows the federal consolidated intercompany regulations (Treas. Reg. section 1.1502-13 et seq.) with respect to many of the issues in those regulations, but because income is not apportioned for federal purposes. Regulation section 25106.5-1 also provides applicable apportionment rules.

Regulation section 25106.5-1, subsection (a)(2) — Conformity

Subsection (a)(2) will be revised to state that it incorporates the version of Treasury Regulation section 1.1502-13 that was in effect as of April 1, 2012.

Regulation section 25106.5-1 subsection (e) — Simplifying Rules Issue

Subsection (a)(5) provides the apportionment rules for intercompany transactions. Subsection (a)(5)(A) sets forth the rules for assigning receipts for purposes of the California sales factor. A new subsection at Regulation section 25106.5-1, subsection (a)(5)(A)4 will make it clear that when a subsection (e) election is made to currently recognize income or loss from an intercompany transaction, the apportionment rules set forth at subsection (a)(5)(A) still apply so that receipts from the intercompany transaction are not included in the sales factor at the time of current recognition.

Subsection (b) provides definitions of terms used in the regulation. Subsection (b)(6) defines the term "treatment as a separate entity" to mean treatment without application of the rules of Regulation section



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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State Controller

CYNTHIA BRIDGES

Executive Director

April 26, 2013

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

**Proposes to Amendments to California Code of Regulations, Title 18,
Section 462.040, *Change in Ownership - Joint Tenancies***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*. The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create “original transferor” status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on June 11, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on June 11, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 462.040.

AUTHORITY

Government Code section 15606

REFERENCE

RTC sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67
Evidence Code section 662

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in RTC section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the Board is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted Property Tax Rule 462.040, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on

subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Effects, Objectives, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA’s petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA’s requested

amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's

recommended amendments to Property Tax Rule 462.040. The effects and objectives of the amendments are to:

- Address the CAA's petition by making the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 462.040 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because division 1 of title 18 of the California Code of Regulations contains the only state regulations that implement, interpret, and make specific the change in ownership provisions in article XIII A of the California Constitution and the RTC, including Property Tax Rule 462.040, and the proposed amendments are not inconsistent or incompatible with any of the provisions in division 1. In addition, there are no comparable federal regulations or statutes to Property Tax Rule 462.040.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with

section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rule 462.040 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on June 11, 2013, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 462.040 during the June 11, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 462.040. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 462.040 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rule 462.040 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the

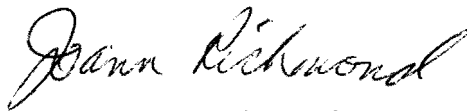
April 26, 2013

originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rule 462.040, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the June 11, 2013 Board Meeting
for Joann Richmond, Chief
Board Proceedings Division

Initial Statement of Reasons
Adoption of Proposed Amendments to
California Code of Regulations, Title 18, Section 462.040,
Change in Ownership - Joint Tenancies

SPECIFIC PURPOSE AND NECESSITY

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in Revenue and Taxation Code (RTC) section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the State Board of Equalization (Board) is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining

the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Specific Purpose, Necessity, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA's petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA's requested amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 462.040 because the Board determined that the amendments were reasonably necessary to:

- Make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board also determined that the proposed amendments to Property Tax Rule 462.040 are reasonably necessary to specifically address the CAA's petition, the problems created by the rule's lack of clear guidance regarding the need for all transferor(s) to be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create original transferor status, the problems created by the rule's lack of guidance regarding RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5, and eliminate any confusion that may have been created by the rule's current examples.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The proposed amendments to Property Tax Rule 462.040 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 462.040.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-004, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its March 12, 2013, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rule 462.040 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 462.040 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 462.040 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(6) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments to Property Tax Rule 462.040 make the rule consistent with and clarify current law regarding the affect of transfers that create joint tenancies, transfers of interests in property held in joint tenancy, and transfers that terminate joint tenancies for property tax purposes, and make minor grammatical changes. As such, the Board anticipates that the proposed amendments will provide more clarity regarding current law and the affect of such transfers, but the Board does not anticipate that the proposed amendments will have a significant effect on the state's economy. Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

In addition, Property Tax Rule 462.040 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section
462.040, *Change in Ownership - Joint Tenancies***

462.040. Change in Ownership - Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The ~~subsequent~~ transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust, and after such creation or transfer, the transferors is one of all transferor(s) are among the joint tenants.~~ Such a transferor(s) who is also a transferee(s) and is, therefore, considered to be an “original transferors” for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an “original transferor” acquires an interest in the joint tenancy property either during the period that the “original transferor” holds an interest or by means of a transfer from the “original transferor,” such spouse shall also be considered to be an “original transferor.” “Spouse” includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, any Any joint tenant may also become an “original transferor” by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be “other than original transferors.” To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create “original transferor” status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both “original transferors.”

Example ~~54(a)~~: A and B purchase property as joint tenants. On December 12, 2004, Later A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.” If A and B had transferred their

interests into trust on any date after October 1, 2013, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

Example 65: A and B purchase property as joint tenants. A and B, ~~as joint tenants,~~ transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 76: A and B acquire property as joint tenants. A and B, ~~as joint tenants,~~ transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 87-1: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A, B, and C are joint tenants and A is an "original transferor." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor" because he did not acquire his interest from A during the period that A held an interest in the initial joint tenancy.

Example 97-2: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants, and C is A's spouse. C is an "original transferor" because he is the registered domestic partner ~~was the spouse of an "original transferor and he acquired an interest by means of a transfer from A."~~ B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 107-3: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." ~~A and B are joint tenants and A is an "original transferor."~~ C is A's spouse. A and B, as joint tenants, transfer to A, B, and C as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 118: A and B acquire real property as joint tenants. A and B, ~~as joint tenants,~~ transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the transferred interests because A is not one of the transferees.

Example 129: A and B purchase property as joint tenants ~~and transfer their joint~~

~~tenancy interests to each other through their respective trusts. A and B become~~
~~“original transferors.” On August 13, 2003, A and B sell a 50% percent interest to C~~
~~and D, with the deed showing A, B, C and D as joint tenants. A and B become~~
~~“original transferors.” C and D become “other than original transferors.” On~~
~~December 13, 2003, C and D then transfer their joint tenancy interests to their~~
~~respective trusts for the benefit of the remaining joint tenants, each other through their~~
~~trusts, so that both C and D become “original transferors.” On January 13, 2004, A~~
~~and B then sell their remaining 50% percent to C and D, and go off title. Under~~
~~circumstances where application of the step-transaction doctrine to disregard the form~~
~~of the transaction would be appropriate due to their intent to avoid a change in~~
~~ownership, A, B, C and D do not become “original transferors” as the result of their~~
~~transfers to each other.~~

(2) The transfer terminates an “original transferor’s” interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining “original transferors”; except that, upon the termination of the interest of the last surviving “original transferor,” there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 1340: A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant.

Example 1411: ~~Following the example set forth in Example 10 (above), A and B~~
~~transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C~~
~~and D are “other than original transferors.” A dies or grants his interest to the~~
~~remaining joint tenants, B, C, and D. No change in ownership because B, an “original~~
~~transferor,” remains as a joint tenant. Subsequently, B dies or grants his interest to C~~
~~and D. 100 percent change in ownership because both A’s and B’s interests had~~
~~previously been excluded from reappraisal and B was the last surviving “original~~
~~transferor.”~~

(3) The transfer terminates a joint tenancy interest held by “other than an original transferor” in a joint tenancy described in (b)(1) and the interest is transferred either to an “original transferor,” or to all the remaining joint tenants, provided that one of the remaining joint tenants is an “original transferor.” The “original transferor” status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 1512: ~~Following the example set forth in Example 10 (above), A and B~~
~~transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C~~
~~and D are “other than original transferors.” A dies or grants his interest to the~~
~~remaining joint tenants, B, C, and D. No change in ownership because B, an “original~~
~~transferor,” remains as a joint tenant. C, not an “original transferor,” grants his~~
~~interest to B and D. No change in ownership because C grants to the remaining joint~~
~~tenants, B and D, and B is an “original transferor.”~~

Example 1613: ~~A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become “original transferors”.~~ A dies and A’s A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.” D dies and D’s joint tenancy interest passes to B by operation of law. ~~without a~~ Since B is an “original transferor,” there is no change in ownership, because B is an “original transferor.” Upon D’s ~~A’s~~ death, the joint tenancy is terminated and B ceases to be an “original transferor.”

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) ~~A~~ a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) ~~A~~ a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) ~~A~~ a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the “original co-owners” for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the “accumulated interests transferred” shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by lawsection 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(c) Rebuttable Presumption. For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an “original transferor.” This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and “original transferors” if there is “reasonable cause” to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. “Reasonable cause” means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 1714: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an “original transferor.”~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

Regulation History

Type of Regulation: Property Tax

Rule: 462.040

Title: *Change in Ownership - Joint Tenancies*

Preparation: Bradley Heller

Legal Contact: Bradley Heller

The proposed amendments to Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create "original transferor" status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

History of Proposed Regulation:

June 11, 2013	Public Hearing
April 26, 2013	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 15, 2013	Notice to OAL
March 12, 2013	Property Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

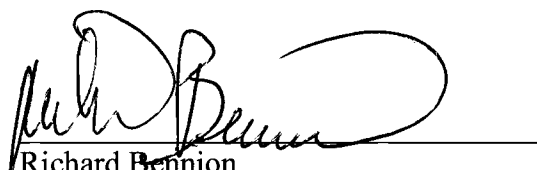
Support: NA

Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Property Taxes Rules 462.040, *Change in Ownership - Joint Tenancies*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on April 26, 2013, 45 days prior to the public hearing.

May 3, 2013


Richard Bennion
Regulations Coordinator
State Board of Equalization



LOS ANGELES COUNTY ASSESSOR
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2770
assessor.lacounty.gov
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SANTOS H. KREIMANN
CHIEF DEPUTY ASSESSOR
GEORGE RENKEI
ASSISTANT ASSESSOR
SHARON MOLLER
ASSISTANT ASSESSOR

June 10, 2013

RECEIVED

JUN 14 2013

Board Proceedings

State Board of Equalization
ATTN: Mr. Rick Bennion, Regulations Coordinator
P.O. Box 942879, MIC 80
Sacramento, California 94279

Dear Mr. Bennion:

**LETTER TO ASSESSOR (LTA) 2013/029
NOTICE OF PROPOSED REGULATORY ACTION BY THE
STATE BOARD OF EQUALIZATION – PROPOSES TO AMENDMENTS TO CALIFORNIA
CODE OF REGULATIONS, TITLE 18, SECTION 462.040, *CHANGE IN OWNERSHIP – JOINT
TENANCIES***

As requested, our office has reviewed the proposed amendments to California Code of Regulations, Title 18, Section 462.040, *Change in Ownership – Joint Tenancies*. We are in agreement with the proposed amendments and do not have any comment at this time.

If you have any questions, please contact Laura Winslow at LWinslow@assessor.lacounty.gov or 213.974.9209.

Sincerely,


Dale Hough
Chief Appraiser
Assessment Services Division

CA:CA

c: Santos Kreimann, Chief Deputy Assessor
File – Appraisal Standards Section

1 BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
2 450 N STREET
3 SACRAMENTO, CALIFORNIA
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7 REPORTER'S TRANSCRIPT
8 JUNE 11, 2013
9 ---000---

10 F PUBLIC HEARINGS
11 F3 PROPOSED ADOPTION OF AMENDMENTS TO
12 PROPERTY TAX RULE 462.040
13 CHANGE IN OWNERSHIP - JOINT TENANCIES
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Reported by: Juli Price Jackson
No. CSR 5214

to

1 P R E S E N T

2

3 For the Board Jerome E. Horton
4 of Equalization: Chairman

5 Michelle Steel
6 Vice-Chairwoman

7 Betty T. Yee
8 Member

9 George Runner
10 Member

11 Marcy Jo Mandel
12 Appearing for
13 John Chiang,
14 State Controller
(per Government
Code Section
7.9)

15 Joann Richmond
16 Chief, Board
17 Proceedings
Division

18 For Staff: Bradley Heller
19 Tax Counsel IV
20 Legal
21 Administration
Tax & Fee
Program

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1	INDEX OF SPEAKERS	
2	NAME	PAGE
3	Janet Lewis	
4	Supervising Real Property Appraiser	
4	Sacramento County	5
5	Barbara Edginton	
6	Manager	
6	San Luis Obispo County	5

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 JUNE 11, 2013
4 ---oOo---
5 MR. HORTON: Ms. Richmond.
6 MS. RICHMOND: Our next item is F3,
7 Proposed Adoption of Amendments to Property Tax
8 Rule 462.040, change in ownership - joint tenancies.
9 And we do have two speakers.
10 MR. HORTON: Thank you. And we'd ask that
11 the speakers please come forward.
12 Mr. Heller, will you please present on the
13 item?
14 MR. HELLER: Certainly. Again I'm Bradley
15 Heller from the Board's Legal Department.
16 And I'm requesting that the Board vote to
17 adopt proposed amendments to Property Tax Rule
18 462.040, joint tenancies.
19 The proposed amendments make the rule
20 consistent with current law regarding the transfer
21 of joint tenancy interest to a trust, Revenue and
22 Taxation Code Section 62, subdivision (p) and Family

23 Code Section 29 -- excuse me, 297.5 regarding
24 transfers between registered domestic partners and
25 Revenue and Taxation Section 62.3 regarding
26 transfers between co-tenants.

27 MR. HORTON: Thank you.

28 Members, let us welcome Ms. Janet Lewis,

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1 the Supervising Real Property Appraiser, Sacramento
2 County, and Miss Barbara Edginton of the SLO
3 Assessor's office.

4 welcome ladies.

5 ---o0o---

6 JANET LEWIS

7 ---o0o---

8 MS. LEWIS: Thank you.

9 MR. HORTON: We'd ask that Ms. Janet --
10 Ms. Lewis please -- please present first.

11 MS. LEWIS: All right. Basically I'm here
12 in support of the changes. I've participated in the
13 interested parties process.

14 And I also want to thank the Board and the
15 Board's staff for their consideration and their work
16 on this project.

17 MR. HORTON: Thank you very much.

18 Ms. Edginton.

19 ---o0o---

20 BARBARA EDGINTON

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MS. EDGINTON: To keep it short, ditto.

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I think everybody has done a very fine job

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on this. And I'd like to lend my support and

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thanks.

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MR. HORTON: Thank you very much.

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Discussion, Members?

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Hearing none, is there a motion?

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Moved by Member Yee to adopt staff

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recommendation, second by Member Steel.

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Without objection, Members, such will be

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the order.

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MS. YEE: Mr. Chairman?

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MR. HORTON: Member Yee.

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MS. YEE: I just wanted to publicly thank

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Miss Edginton for all of her assistance on this rule

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during its various iterations over the years, but,

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more importantly, just really ensuring that it's

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workable and really is fair in terms of how it's

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applied.

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Thank you.

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MR. HORTON: Further comments, Members?

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Hearing none, thank you again.

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1 REPORTER'S CERTIFICATE

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3 State of California)

4) ss

5 County of Sacramento)

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7 I, JULI PRICE JACKSON, Hearing Reporter for
8 the California State Board of Equalization certify
9 that on JUNE 11, 2013 I recorded verbatim, in
10 shorthand, to the best of my ability, the
11 proceedings in the above-entitled hearing; that I
12 transcribed the shorthand writing into typewriting;
13 and that the preceding pages 1 through 6 constitute
14 a complete and accurate transcription of the
15 shorthand writing.

16

2013_06_11F3.txt

17 Dated: JUNE 17, 2013

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JULI PRICE JACKSON

22

Hearing Reporter

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2013 MINUTES OF THE STATE BOARD OF EQUALIZATION**Tuesday, June 11, 2013****PUBLIC HEARINGS****F2 PROPOSED ADOPTION OF AMENDMENTS TO CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT (ACT) REGULATIONS 4601, 4603, 4604 AND 4605**

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for adoption of proposed amendments to Cigarette and Tobacco Products Licensing Act (Act) Regulations 4601, *Service of a Notice of Violation or Warning Notice*; 4603, *Penalties for Licensed or Unlicensed Retailers*; 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*; and, 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*; to provide for the service of all notices under the Act and the reduction of suspensions to five days when warranted (Exhibit 6.3).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the amendments to Cigarette and Tobacco Products Licensing Act (Act) Regulations 4601, 4603, 4604 and 4605 as recommended by staff.

Ms. Steel requested a report regarding staff's use of the new discretion to reduce suspensions to 5 days, after the proposed amendments to Regulations 4603-4605 are effective and implemented, to make sure that staff is using the discretion to help taxpayers by reducing what would otherwise be 10-day suspensions to 5-day suspensions, when a 10-day suspension seems to harsh, and staff is not using the discretion to increase what would otherwise be 0-day suspensions to 5-day suspensions.

F3 Proposed Adoption of Amendments to Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for adoption of amendments to Property Tax Rule 462.040, *Change in Ownership – Joint Tenancies*, to make the rule consistent with and clarify current law regarding transactions involving joint tenancies (Exhibit 6.4).

Speakers: Janet Lewis, Supervising Real Property Appraiser, Sacramento County Assessor's Office
Barbara Edginton, Manager, San Luis Obispo County Assessor's Office

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the amendments to Property Tax Rule 462.040 as recommended by staff.

Ms. Yee thanked Ms. Edginton for her work on this regulation.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

April 26, 2013

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

**Proposes to Amendments to California Code of Regulations, Title 18,
Section 462.040, *Change in Ownership - Joint Tenancies***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*. The proposed amendments to Property Tax Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create “original transferor” status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on June 11, 2013. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on June 11, 2013. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 462.040.

AUTHORITY

Government Code section 15606

REFERENCE

RTC sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1, and 67
Evidence Code section 662

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in RTC section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the Board is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted Property Tax Rule 462.040, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on

subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Effects, Objectives, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA’s petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA’s requested

amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's

recommended amendments to Property Tax Rule 462.040. The effects and objectives of the amendments are to:

- Address the CAA's petition by making the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 462.040 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because division 1 of title 18 of the California Code of Regulations contains the only state regulations that implement, interpret, and make specific the change in ownership provisions in article XIII A of the California Constitution and the RTC, including Property Tax Rule 462.040, and the proposed amendments are not inconsistent or incompatible with any of the provisions in division 1. In addition, there are no comparable federal regulations or statutes to Property Tax Rule 462.040.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with

section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Property Tax Rule 462.040 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on June 11, 2013, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 462.040 during the June 11, 2013, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 462.040. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 462.040 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rule 462.040 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the

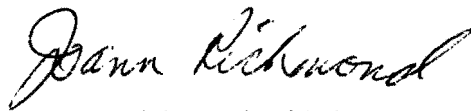
April 26, 2013

originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rule 462.040, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Joann Richmond". The signature is written in a cursive, flowing style.

Joann Richmond, Chief
Board Proceedings Division

JR:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 462.040, *Change in Ownership - Joint Tenancies*

SPECIFIC PURPOSE AND NECESSITY

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Legislature codified the definition of "change in ownership" in Revenue and Taxation Code (RTC) section 60 and codified other provisions regarding whether a transfer of property results in a change in ownership or is excluded from the definition of "change in ownership" in RTC sections 61 through 69.5.

Under Government Code section 15606, subdivision (c), the State Board of Equalization (Board) is authorized to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. The Board adopted California Code of Regulations, title 18, section (Property Tax Rule) 462.040, *Change in Ownership – Joint Tenancies*, pursuant to Government Code section 15606, to implement, interpret, and make specific the change in ownership provisions, under article XIII A of the California Constitution and the RTC, applicable to transactions that create, transfer, or terminate joint tenancy interests.

In particular, Property Tax Rule 462.040 implements, interprets, and makes specific RTC section 65, subdivisions (a) through (d), which provide that:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining

the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

The rule was last amended in 2003 and the 2003 amendments became effective on November 13, 2003. As relevant here, the 2003 amendments added the second to last sentence to Property Tax Rule 462.040, subdivision (b)(1), which provides that “Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.”

In addition, Property Tax Rule 462.040 does not implement, interpret, or make specific the provisions of RTC section 62, subdivision (p), regarding transfers between registered domestic partners and Family Code section 297.5 regarding the rights of registered domestic partners, which became operative after the 2003 amendments to the rule. Furthermore, Property Tax Rule 462.040 does not currently implement, interpret, or make specific the provisions of Assembly Bill No. 1700 (Stats. 2012, ch. 781), which added section 62.3 to the RTC to provide that “change in ownership” does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant.

Specific Purpose, Necessity, and Benefits of the Proposed Amendments

On February 22, 2012, the Board received a petition from the California Assessors’ Association (CAA) requesting that the Board amend Property Tax Rule 462.040. As relevant here, the petition requested that the Board limit the effect of the 2003 amendments regarding transfers to trusts by amending the rule to provide that a transfer of a joint tenancy interest to a trust meeting the requirements specified in Property Tax Rule 462.040, subdivision (b)(1), creates original transferor status (within the meaning of RTC § 65) only if made between the original effective date of the 2003 amendments (November 13, 2003) and the effective date of the CAA’s requested amendment limiting the scope of the 2003 amendments regarding transfers to trusts.

The Board considered the CAA's petition during its meeting on March 21, 2012, and directed Board staff to conduct two meetings with interested parties to discuss the CAA's requested amendments. Therefore, Board staff met with interested parties on August 27, 2012, and January 29, 2013, to discuss amending Property Tax Rule 462.040; and staff subsequently prepared Formal Issue Paper 13-004, and submitted it to the Board for consideration during its March 12, 2013, Property Tax Committee meeting.

In the formal issue paper, Board staff recommended that the Board amend Property Tax Rule 462.040 to:

- Provide in subdivision (b)(1) and renumbered examples 5 and 17 that a transfer of a joint tenancy interest to a trust does not create original transferor status if made after October 1, 2013 (the anticipated effective date of the proposed amendments), consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy (Civ. Code, § 683.2, subd. (a)(1); Matthew Bender, *California Wills & Trusts* (2012), section 140.06[9][a]);
- Provide in subdivision (b)(1) that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Address county assessors' additional concerns about certain transfers that eliminate a joint tenant or tenants by providing in subdivision (b)(1) that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Provide in subdivision (b)(1) that "spouse" includes a registered domestic partner consistent with Family Code section 297.5;
- Provide in subdivision (b)(5) that transfers of joint tenancy interests between registered domestic partners are excluded from change in ownership, consistent with RTC section 62, subdivision (p);
- Include new subdivision (b)(8) incorporating the provisions of RTC section 62.3, which provide that "change in ownership" does not include a transfer occurring after January 1, 2013, of real property from one cotenant to the other that takes effect upon the death of one cotenant;
- Provide more detailed information in renumbered examples 6 through 16 to clarify the status of all transferees and transferors, specifically, whether they are "original transferors" or "other than original transferors"; and
- Make other minor grammatical changes, such as deleting the word "subsequent" from example 3, and replacing the "%" symbol with the word "percent" and consistently using quotation marks around the phrases "original transferor" and "other than original transferor" throughout the rule.

The recommendations were the result of a consensus between staff and the interested parties who participated in the interested parties meetings.

At the conclusion of the March 12, 2013, Property Tax Committee meeting, the Board agreed with staff's recommendations and unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 462.040 because the Board determined that the amendments were reasonably necessary to:

- Make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy;
- Clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership, consistent with RTC section 65, subdivision (b);
- Clarify that the elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b);
- Make the rule consistent with RTC section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners;
- Make the rule consistent with RTC section 62.3 regarding transfers between cotenants;
- Provide more detailed examples; and
- Make minor grammatical changes.

The Board also determined that the proposed amendments to Property Tax Rule 462.040 are reasonably necessary to specifically address the CAA's petition, the problems created by the rule's lack of clear guidance regarding the need for all transferor(s) to be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create original transferor status, the problems created by the rule's lack of guidance regarding RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5, and eliminate any confusion that may have been created by the rule's current examples.

The Board anticipates that the proposed amendments will promote fairness throughout California's 58 counties by clarifying the types of transfers that create "original transferor" status within the meaning of RTC section 65 and giving the public, local boards of equalization and assessment appeals boards, and county assessors additional notice regarding the provisions of RTC sections 62, subdivision (p), and 62.3, and Family Code section 297.5.

The proposed amendments to Property Tax Rule 462.040 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 462.040.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 13-004, the attachments to the issue paper, and the comments made during the Board's discussion of the issue paper during its March 12, 2013, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rule 462.040 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 462.040 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 462.040 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(6) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments to Property Tax Rule 462.040 make the rule consistent with and clarify current law regarding the affect of transfers that create joint tenancies, transfers of interests in property held in joint tenancy, and transfers that terminate joint tenancies for property tax purposes, and make minor grammatical changes. As such, the Board anticipates that the proposed amendments will provide more clarity regarding current law and the affect of such transfers, but the Board does not anticipate that the proposed amendments will have a significant effect on the state's economy. Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 462.040 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

In addition, Property Tax Rule 462.040 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Rule 462.040 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 462.040 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section
462.040, *Change in Ownership - Joint Tenancies***

462.040. Change in Ownership - Joint Tenancies.

(a) General Rule. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The ~~subsequent~~ transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% percent of the property.

(b) Exceptions. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, ~~including an interest in a trust, and after such creation or transfer, the transferor is one of all transferor(s) are~~ among the joint tenants. Such a transferor(s) who is also a transferee(s) and is, therefore, considered to be an "original transferor" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an "original transferor" acquires an interest in the joint tenancy property either during the period that the "original transferor" holds an interest or by means of a transfer from the "original transferor," such spouse shall also be considered to be an "original transferor." "Spouse" includes a registered domestic partner who shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities and obligations as granted to and imposed upon spouses pursuant to section 297.5 of the Family Code. For a transfer of a joint tenancy interest into trust from November 13, 2003 to a date before October 1, 2013, any Any joint tenant may also become an "original transferor" by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be "other than original transferors." To create original transferor status, a transaction must occur that either changes title to joint tenancy or adds an additional person to title. The elimination of a joint tenant does not create "original transferor" status in any of the remaining joint tenants.

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both "original transferors."

Example ~~54~~(a): A and B purchase property as joint tenants. On December 12, 2004, ~~Later~~ A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors." If A and B had transferred their

interests into trust on any date after October 1, 2013, neither A's trust nor B's trust would be considered a joint tenant and neither A nor B would be considered an "original transferor" as a result of the transfer into trust.

Example 65: A and B purchase property as joint tenants. A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 76: A and B acquire property as joint tenants. A and B, as joint tenants, transfer to A, B, C, D, and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E, the wife of an "original transferor," is also an "original transferor." (C and D are "other than original transferors.")

Example 87-1: A is the sole owner of property. A grants to A, B, and C as joint tenants. A is an "original transferor." B and C are "other than original transferors." A, B, and C are joint tenants and A is an "original transferor." A dies. A's interest passes by operation of law to B and C, resulting in a 100 percent change in ownership. Subsequently, B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an "original transferor" because he did not acquire his interest from A during the period that A held an interest in the initial joint tenancy.

Example 97-2: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." C is A's registered domestic partner. A and B, as joint tenants, transfer to A, B, and C, as joint tenants, and C is A's spouse. C is an "original transferor" because he is the registered domestic partner was the spouse of an "original transferor and he acquired an interest by means of a transfer from A." B becomes an "original transferor" because he is a transferor who is among the transferees.

Example 107-3: A transfers to A and B as joint tenants. A is an "original transferor," and B is an "other than original transferor." A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B, as joint tenants, transfer to A, B, and C as joint tenants. B becomes an "original transferor." C is A's registered domestic partner. C is an "original transferor" because C was the registered domestic partner of an "original transferor" and C acquired an interest by means of a transfer from A.

Example 118: A and B acquire real property as joint tenants. A and B, as joint tenants, transfer to B, C, and D, as joint tenants. 66 2/3% percent change in ownership of the transferred interests because A is not one of the transferees.

Example 129: A and B purchase property as joint tenants and transfer their joint

~~tenancy interests to each other through their respective trusts. A and B become~~
~~“original transferors.” On August 13, 2003, A and B sell a 50% percent interest to C~~
~~and D, with the deed showing A, B, C and D as joint tenants. A and B become~~
~~“original transferors.” C and D become “other than original transferors.” On~~
~~December 13, 2003, C and D then transfer their joint tenancy interests to their~~
~~respective trusts for the benefit of the remaining joint tenants, each other through their~~
~~trusts, so that both C and D become “original transferors.” On January 13, 2004, A~~
~~and B then sell their remaining 50% percent to C and D, and go off title. Under~~
~~circumstances where application of the step-transaction doctrine to disregard the form~~
~~of the transaction would be appropriate due to their intent to avoid a change in~~
~~ownership, A, B, C and D do not become “original transferors” as the result of their~~
~~transfers to each other.~~

(2) The transfer terminates an “original transferor’s” interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining “original transferors”; except that, upon the termination of the interest of the last surviving “original transferor,” there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 1340: A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant.

Example 1411: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. Subsequently, B dies or grants his interest to C and D. 100 percent change in ownership because ~~both A's and B's interests had previously been excluded from reappraisal and~~ B was the last surviving “original transferor.”

(3) The transfer terminates a joint tenancy interest held by “other than an original transferor” in a joint tenancy described in (b)(1) and the interest is transferred either to an “original transferor,” or to all the remaining joint tenants, provided that one of the remaining joint tenants is an “original transferor.” The “original transferor” status of any remaining joint tenants ceases when a joint tenancy is terminated.

Example 1512: ~~Following the example set forth in Example 10 (above),~~ A and B transfer to A, B, C, and D as joint tenants. A and B are “original transferors,” and C and D are “other than original transferors.” A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an “original transferor,” remains as a joint tenant. C, not an “original transferor,” grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an “original transferor.”

Example 1613: ~~A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors". A dies and A's~~ A and B transfer to A, B, C, and D as joint tenants. A and B are "original transferors," and C and D are "other than original transferors." A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an "original transferor," remains as a joint tenant. C, not an "original transferor," grants his interest to B and D as joint tenants. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an "original transferor." D dies and D's joint tenancy interest passes to B by operation of law. ~~without a~~ Since B is an "original transferor," there is no change in ownership. ~~because B is an "original transferor."~~ Upon D's ~~A's~~ death, the joint tenancy is terminated and B ceases to be an "original transferor."

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) A transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) A transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) A transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion, pursuant to the provisions of section 63 of the Revenue and Taxation Code, or the registered domestic partner exclusion, pursuant to the provisions of section 62(p) of the Revenue and Taxation Code, applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or \$10,000, then only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law section 63.1 of the Revenue and Taxation Code.

(8) The transfer is one to which the cotenancy exclusion applies pursuant to section 62.3 of the Revenue and Taxation Code.

(c) Rebuttable Presumption. For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(d) Reasonable Cause. For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

Example 1714: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. ~~Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other.~~ The assessor may determine that the sales contract and trust instruments establishes that A and B intended to hold title as joint tenants upon purchase, ~~and that each subsequently became an "original transferor."~~

Note: Authority cited: Section 15606, Government Code. Reference: Sections 60, 61, 62, 62.3, 63, 63.1, 65, 65.1 and 67, Revenue and Taxation Code; and Section 662, Evidence Code.

Regulation History

Type of Regulation: Property Tax

Rule: 462.040

Title: *Change in Ownership - Joint Tenancies*

Preparation: Bradley Heller

Legal Contact: Bradley Heller

The proposed amendments to Rule 462.040 make the rule consistent with current law, which provides that the transfer of a joint tenancy interest to a trust severs the joint tenancy, Revenue and Taxation Code (RTC) section 62, subdivision (p), and Family Code section 297.5 regarding registered domestic partners, and RTC section 62.3 regarding transfers between cotenants. The proposed amendments clarify that all transferor(s) must be among the joint tenants for a transfer to be excluded from change in ownership and that the elimination of a joint tenant does not create "original transferor" status (within the meaning of RTC § 65) in any of the remaining joint tenants, consistent with RTC section 65, subdivision (b). The proposed amendments also provide more detailed examples, and make minor grammatical changes.

History of Proposed Regulation:

June 11, 2013	Public Hearing
April 26, 2013	OAL publication date; 45-day public comment period begins; Interested Parties mailing
April 15, 2013	Notice to OAL
March 12, 2013	Property Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA